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STANDING COMMITTEE ON RESOURCES DEVELOPMENT
(WORKMEN'S COMPENSATION BOARD HEARING)

Tuesday, April 18, 1972

Morning sitting

1 --- Upon commencing at 10:09 a.m.

2 THE CHAIRMAN: I will call this meeting to
3 order and continue these Hearings with regard to the
4 Standing Committee on Resources Development of
5 the Legislature and the matters pertaining to the
6 Workmen's Compensation Board. Firstly this morning I
7 thought we would have Committee Counsel, Mr. Donnelly,
8 outline briefly the order we thought we would follow
9 this morning, and if Mr. Donnelly would care to do this
10 at this time it would set the matter on its way.

11 MR. DONNELLY: Thank you, Mr. Chairman.
12 Members of the Committee and particularly to the public:
13 in order that these proceedings may be more readily
14 followed, may I say this. As far as the physical set-up
15 of the room it is proposed to proceed in this manner:
16 that on my right are the members of the Committee.
17 Opposite me is Mr. Cauley who will be the first witness
18 and beside him is his counsel and I think his junior
19 solicitor assisting his counsel, Mr. Humphrey, and beside
20 me is Mr. Watt who is assisting me.

21 Behind me are the press and it appears from
22 the microphones the proceedings are being recorded by
23 tape and also by shorthand -- in any event, it will be
24 recorded by Hansard.

25 My function here is as counsel as to the
26 Committee. Now to that extent I am the servant of the
27 Committee and also the members of the House and to that
28 extent the public and witnesses and questions to the
29 witnesses apart from the Committee members or members of
30 the House should be addressed to me, and for that purpose

1 I propose to make myself available practically on an
2 around-the-clock basis so that if there are persons who
3 wish to instruct me they may do so.

4 Now it is proposed that the witnesses will
5 be sworn and thereby accorded the privilege to the evidence
6 given to them. The sequence of the questioning will be
7 this: that I propose before I start any new evidence to
8 deal with Mr. Cauley and see if he has had a full opportunity
9 to bring his evidence before the Committee, and the sequence
10 of the questioning of the individual witnesses will be this:
11 that I will conduct the questions; thereafter the Committee
12 members have an opportunity to question and thereafter the
13 members of the House have their opportunity. Before anyone
14 questions from the floor, the Chairman should recognize that
15 person.

16 Now, in addition, as I understand the
17 Committee's plan it is proposed we meet this morning from
18 10:00 to 12:00 and we will wait until after the question
19 period in the House today and resume at 3:00 and continue
20 through until about 6:00, I think for today and then the
21 Committee proposes to meet again tonight from 8:00 until
22 something in the area of 10:30. The same procedure is
23 expected to be adopted tomorrow if necessary, except as
24 I understand there is no evening hearing planned, and then
25 on Thursday it is proposed if necessary to duplicate
26 today's proceedings with three sittings in the one day.

27 Now, may I say this to the Committee
28 members before we start. This is a relatively new procedure
29 of the Committee to have counsel and you well know that I
30 am devoid of any disciplinary control. The only control

1 on the proceedings that I have is permissive and it
2 originates with the Committee. Accordingly, it is within
3 your easy competence to destroy my effectiveness and to
4 remember me as your first casualty and anyone bent on
5 disrupting these proceedings can easily do so without
6 distinction. Whether I turn out to be a useful instrument
7 your finding is in your annals. If it is a successful
8 operation it will be either magic or genius and it will
9 simply be a demonstration of your internal discipline
10 as a Committee. It will be a manifestation of your
11 expressive intent to avoid a recurrence of the last day's
12 proceedings.

13 Finally, and I say this to the Committee,
14 to the members of the House and the public, that in my
15 view this is an investigatory procedure by a legislative
16 body; it is not accusatory by a judicial body. In my
17 mind it is a fundamental principle that when we deal
18 directly and indirectly with lives and reputations of
19 men who have long public service, many of them have
20 served with honour, integrity and distinction, and I
21 propose that they are absolutely entitled to be treated
22 accordingly with courtesy and respect. Now I don't
23 propose being an instrument of destruction in any cause
24 nor do I propose permitting this Inquiry to become a
25 crucible to consume men or their reputations. We will
26 conduct an Inquiry into the facts. There have been
27 indications so far of personal discord, but these
28 proceedings must not become a launching pad for personal
29 attacks nor for personal counterattacks, and that personal
30 discord should not be permitted to cloud the true issues.

1 It may be necessary from time to time to gently remind
2 a witness to stick to the facts and to avoid conclusions
3 or opinions or argument. I realize you are not bound
4 by any strict rules of evidence here. It is the Committee's
5 difficult task to tread that balance by excluding
6 extraneous matters and being mindful always not to suppress
7 some individual's right to be heard. I expect that you
8 may enjoy more latitude here than you would in a court
9 of law, and our proceedings we must remind do not exclude
10 other proceedings in other forms.

11 Now, Mr. Chairman, I propose beginning as
12 I have already stated by asking Mr. Cauley of further
13 matters to be brought before the Committee and with your
14 permission I would ask that although he has been sworn,
15 I think he be resworn today by the Chairman and I may
16 proceed with the questioning.

17 MR. DEANS: Mr. Chairman, before we proceed
18 with Mr. Cauley, I want to clear a matter up. If Mr.
19 Cauley is going to deal with the matters surrounding
20 false affidavits or the claim of false affidavits, I
21 would like to suggest that all of the witnesses that
22 are going to present evidence on those matters be heard
23 singly and that the other witnesses to that matter be
24 asked to leave this chamber until such time as we have
25 heard the witness. Now the reason being that obviously
26 if they are all concerned about the same matter and pre-
27 pared to give evidence on the same matter we should hear
28 their evidence without these witnesses' views being
29 clouded or perhaps somehow influenced by what they have
30 heard from other witnesses. If it's Mr. Cauley's intent

1 to speak about the matter of the perjured -- as he called
2 the so-called perjured affidavits, I would like to ask
3 that he be heard and that the other witnesses be asked
4 to remain outside of the hearing of Mr. Cauley.

5 MR. ALIAN: Mr. Chairman, I wonder if we
6 might have the benefit of the advice of the counsel in
7 that regard.

8 THE CHAIRMAN: Mr. Donnelly?

9 MR. DONNELLY: Mr. Chairman, once again
10 my position is simply to advise and not to make decisions.
11 It well may be there is considerable merit of Mr. Dean's
12 recommendation that witnesses perhaps more spontaneously
13 give their evidence if they do not hear similar witnesses
14 on similar points. But there is also another very
15 fundamental and possibly more important principle involved
16 and that is this: that Mr. Dean speaks of the question
17 of the affidavit and criminal allegations that arise from
18 it; and the second principle is that someone accused of
19 wrong doing should not be excluded, that is, repeating
20 this is not a trial, but certainly in no trial is a person
21 excluded because he may be a witness although he is the
22 accused. And in my own submission anyone accused by Mr.
23 Cauley of wrong doing probably has a right to hear that
24 of which he is accused, so he himself may give evidence
25 in reply or instruct Committee Counsel adequately on the
26 points made against him.

27 THE CHAIRMAN: Have any other Committee
28 members any further discussion on this point?

29 MR. HUMPHREY: Mr. Chairman, before we
30 start may I have the pleasure of introducing myself, Mr.

1 David G. Humphrey and I appear with Mr. Lakin of my office.

2 THE CHAIRMAN: Then I would take it that
3 it is the feeling of the Committee that the witnesses
4 be allowed to remain in the room when other witnesses
5 are giving testimony; is that correct?

6 Mr. Donnelly, you may carry on then.

7 MR. DONNELLY: Mr. Cauley, would you be
8 kind enough to take the oath again, please, sir, with
9 the Chairman.

10 THE CHAIRMAN: (Swears the witness).

11 JOHN F. CAULEY, sworn:

12 EXAMINATION BY MR. DONNELLY:

13 Q. Mr. Cauley, as you know, my name is
14 Donnelly and I was not here on the 5th of April when
15 your evidence was taken, sir. Since that time on
16 Thursday last I have had the opportunity of interviewing
17 you in the presence of your counsel, Mr. Humphrey, is
18 that correct?

19 A. That is correct.

20 Q. And I don't propose, sir, restating
21 your evidence again, but I want the Committee to know
22 whether or not you have called all of your evidence and
23 fully presented evidence bearing on the various points.
24 Now I understand there are some matters that you wish
25 to deal with in support of evidence given the other day;
26 is that correct?

27 A. Yes, I have three or four -- two or
28 three here that I would like to give in support, and
29 possibly to clarify the situation as to the affidavits.
30 There was no thought on my part of intent of criminal

1 activity. I realize that these two ---

2 Q. Excuse me, I don't want to interrupt
3 you, sir, but that may be the subject of questioning and
4 I would prefer if before we start on that if there is
5 something you wish to state relative to your earlier
6 evidence perhaps you can do so.

7 A. This is an affidavit duly sworn to
8 which I have the original and a copy for the Committee.

9 It says: "In the Province of Ontario, in the County
10 of Halton, in the matter of The Special
11 Committee on Resources and Development of the
12 Ontario Legislature, and in the matter of
13 the Workmens Compensation Board.

14 I, Frank Edward Ragonetti, of the Town
15 of Burlington, in the County of Halton,
16 Province of Ontario, Author, make oath and
17 say as follows:-

18 1. I am the co-author with John F. Cauley
19 of the Town of Ancaster in the County of
20 Wentworth, of a manuscript Politics in
21 Canada and as such have knowledge of all
22 matters herein deposed to.

23 2. I am co-authoring manuscripts with the
24 said John F. Cauley, and in June, 1969,
25 while transcribing a tape received from the
26 said John F. Cauley in regards to our
27 manuscripts relating to Politics in Canada,
28 the following excerpt was on the said
29 tape (and the following is in quotations):
30 'Get away, get away Buster. Go sit down.

1 Well, Al, what brings you all the way over
2 to this famous suburb this afternoon?

3 I am interested in how you are feeling. You
4 know a lot at the Board are wondering just
5 how you are making out.

6 Well I'm glad of the interest but I can't
7 understand it surely after all the years
8 I've been around that place I should be able to
9 take a weeks holiday without so many people
10 wondering how I am.

11 The minister ordered me over in connection
12 with the continuing differences of opinion
13 between the Chairman and yourself.

14 Such as what?

15 The minister realizes that you're at the
16 bottom of the discontent and unrest around
17 the Board especially at the senior staff
18 level.

19 Where would he ever get that idea he hasn't
20 had a meeting with us in connection with
21 any administrative problems for almost
22 two years maybe a little longer.

23 Jack, if you would just tell top union
24 officials in the province that you will
25 give your unqualified support to this new
26 system the unions would buy it.

27 That's a lot of crap.

28 Well the Minister has directed me to draft
29 a letter for your signature to be read in
30 the House concerning the administration.

1 Directed you a staff member to draft a letter
2 for me to sign?

3 Yes.

4 Why the hell doesn't he write his own letter
5 and ask me to his office to see if it's
6 something I would sign or not?

7 Jack, believe me, I am just carrying out
8 instructions.

9 Al, I can't believe the Minister would be
10 a party to any sort of threat. What's the
11 letter supposed to be all about.

12 He has directed me to draft a letter
13 stating you are now prepared to give your
14 full cooperation to the administration of
15 the new system.

16 Al, that's a lot of goddamn nonsense. If
17 additional staff were required because of
18 increased volume it should be in the Claims
19 Department. However even this is not
20 necessary.

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I take it then, Jack, that you are not prepared to sign the letter.

Al, certainly I will not sign any letter under such circumstances.

Jack, believe me, I am only carrying out instructions.

Well, Al, what's the alternative?

Jack, there is none. The Minister's orders are that you are to sign the letter or else.

Al, if and I again say "if" the Minister issued such instructions you can tell him it's or else. Well, Al, now that that's over come on and I'll buy you a drink before you go home. Would you rather have a rum or scotch.'

3. That I was informed by John F. Cauley in June of 1969, that the aforementioned quotation was a conversation between John F. Cauley and a Mr. A. G. MacDonald at Mr. Cauley's Ancaster residence during the last week of April, 1969.

4. The aforementioned quotation had no relation to the said manuscripts that John F. Cauley and I were preparing regarding our manuscripts on Politics in Canada," and that is the end of the affidavit.

Q. Do you wish to call that, sir, as an Exhibit, I take it?

A. Yes, if that is the Committee's desire.

EXHIBIT NO. 1 Affidavit of Frank Edward Ragonetti.

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1 Q. Yes.

2 THE WITNESS: The affidavit was filed on
3 the advice of counsel and they asked me if there were
4 any tapes around and there are dozens of them and any
5 manuscripts or any other notes or anything that would be
6 offered to this Committee.

7 MR. DONNELLY: Q. Tell me, sir, is the
8 tape itself presently available?

9 A. No, after this was done and of course
10 in 1969, there was never any thought that we would ever be
11 involved in what we are now so I presume it went right on
12 -- other things were on, but this was in with the manuscripts.

13 Q. Also, sir, is the original transcription
14 from the tape available?

15 A. I think it is; I wouldn't be sure; I
16 think it was. Because he took it to the lawyer's office
17 in Burlington yesterday, this person that swore the
18 affidavit.

19 Q. That person who swore the affidavit
20 is available to give evidence, I take it?

21 A. Yes, I believe so.

22 Q. The name of the person that swore the
23 affidavit?

24 A. The solicitor?

25 Q. No.

26 A. Oh, Ragonetti. The writer for me.

27 Q. Yes.

28 A. Ragonetti, F. Edward Ragonetti.

29 Q. And I take it, sir, your evidence is
30 that the tape has been used again?

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1 A. Oh, again and again.

2 Q. Was Mr. Ragonetti competent to
3 identify any of the voices on the tapes, sir?

4 A. I don't think so, no. No, he would
5 just have to take my word for it. I don't think he ---

6 Q. As well, sir, were there some docu-
7 ments you wanted to bring forward in support of your claim
8 for additional payments due to you?

9 A. Yes. This is a copy of a letter of
10 April 12th to my solicitor, Mr. Humphreys, and I will read
11 -- I will leave the letter and read the paragraph that has
12 reference to it and what your question is, I believe, and
13 it is the third paragraph on the letter of April 12th,
14 1972, to Mr. David G. Humphrey, Q.C., and the paragraph
15 begins:

16 "I discussed with and instructed my Hamilton
17 lawyer, Mr. W. Canary, on April 28, 1969,
18 to take the necessary steps to set up a
19 firm to be known as Forster and Fitzgerald,
20 to act in the fields of Industrial Relations,
21 Pensions, Industrial Fringe Benefits and
22 Workmen's Compensation. Due to my being
23 continued on the Board's payroll, listed
24 as a Commissioner and being paid salary,
25 I advised my lawyer that under these
26 circumstances the proposed corporation would
27 have to be held until I went on retirement
28 pension," and that is the end of that.

28 EXHIBIT NO. 2: Letter dated April 12, 1972, to
29 Mr. David G. Humphrey, Q.C. from
30 John F. Cauley.

Q. If you will excuse me, sir, if we

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1 could stop there for a moment. You wrote to Mr. Humphrey,
2 advising him that in April of 1969, you had given
3 instructions to your Hamilton solicitor to set up this
4 company and to do certain work?

5 A. That's right, and he will --
6 Mr. Canary, I was talking to him the other day, will
7 naturally support this.

8 Q. Is the letter to Mr. Canary available,
9 sir?

10 A. No, it went down to his office and
11 we discussed it in his office and on May 12th of 1969 is
12 when I told him to forget about it because it was on that
13 day that Mr. Bales and I confirmed an arrangement that was
14 referred to last week and ---

15 Q. Going back to the Canary incident,
16 in the latter part of April, you still had some two years
17 and four months to go until your retirement in August of
18 1971; is that correct?

19 A. Not at that time, no, I was getting
20 ready to get out.

21 Q. You were considering at the time of
22 the Canary interview to retire then, were you, sir?

23 A. Yes, because of various things. It
24 wasn't until May 5th that the first inclination or the
25 first meeting really that I had with Mr. Bales concerning
26 ---

27 Q. Sir, were there some other documents
28 you wished to bring forward?

29 A. Yes. I will leave this with the
30 clerk. What I wrote down here in the latter part is the

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1 statement given by Mr. MacDonald last Wednesday, that I
2 was to be continued for one year as a consultant, beyond
3 my 65th birthday. This is written in in handwriting and
4 that is my handwriting.

5 Now, I have a report from Dr. R. G. McHarg
6 and it is spelled M-c-H-A-R-G, a registered physician in
7 Ancaster who is also a coroner, I presume, for the
8 Township, and it is headed, "Re: John F. Cauley:

9 The above named has been a patient of mine
10 for the past 15 years.

11 During this time he has been in good
12 health with the exception of the following:

13 In June 1965 he suffered a heart attack
14 from which he recovered uneventfully.

15 At this time it was also discovered that
16 he had diabetes which has been well controlled
17 since with a diabetic diet and Tolbutamide.

18 In April 1969, he was seen because of an
19 elevated pressure,"

20 and I think the evidence will show I referred to that last
21 Wednesday or two weeks ago.

22 "He was referred to Dr. W. J. Walsh,
23 Assistant Dean of McMaster Medical School
24 for a follow-up cardiac assessment.
25 His examination revealed the elevated blood
26 pressure but was otherwise negative. An
27 Electrocardiogram at this time was normal
28 with the exception of evidence of the old
29 myocardial infarct.

30 It was his opinion that the elevation of

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1 blood pressure was significant enough to
2 warrant any active treatment. A few weeks
3 rest would suffice.
4 Follow-up in my office several weeks later
5 revealed normal reading. Since that time he
6 has had no medical problems."

7 Now, I can leave the original or the copy.

8 EXHIBIT NO. 3: Copy of medical report by
9 Dr. R. G. McHarg, re John F. Cauley.

10 And the letter from the Workmen's Compensa-
11 tion Board, it's dated August 18th, 1971, directed to
12 me at my home and it states:

13 "Dear Mr. Cauley:
14 Attached is your final salary cheque under
15 the Board's Early Retirement Plan.
16 A letter outlining the details regarding
17 your pension and the various benefits will
18 be sent to you within the next few days.
19 I hope that you, Lois and John are well.
20 Happy birthday and all good wishes.

21 Sincerely,

22 (signed)
23 (Miss) A. M. Johnston
24 Personnel Officer."

25 Q. In that connection, sir, you discuss
26 the word "salary?"

27 A. Yes.

28 Q. Do you place any stress, sir -- do
29 you place any stress on the words following "salary"
30 under the Early Retirement Plan?"

A. I don't quite follow you because I
have reached the time when I could have retired,

1 to my 65th birthday.

2 Q. The significance really deals with
3 the word "salary."

4 A. It is salary because salary, as I
5 have maintained throughout and then the benefits, the
6 accumulated sick benefits in accordance with not only
7 the Civil Service Plan but the plan of the Board and the
8 accumulated holidays would have followed automatically.

9 EXHIBIT NO. 4: Letter to Mr. J. F. Cauley, dated
10 August 18th, 1971, from the
11 Workmen's Compensation Board,
12 Personnel Officer.

13 Q. Now, were there other documents,
14 sir?

15 A. Well, I am not sure whether this was
16 filed or not. This was just the notification of my
17 accumulated credits as of December 31st of 1968. It is
18 on a form for this purpose and it gives my number,
19 J. F. Cauley, Anniversary Date January 1st of 1944,
20 date of this audit December 31st, 1968, attendance credits
21 and leave of absence plan total days - 351., outstanding
22 vacation credits 25 weeks. My contribution to the
23 superannuation or pension fund to that date is \$24,159.90.
24 The interest rate at the time was 6.26%.

25 EXHIBIT NO. 5: The Workmen's Compensation Board
26 Notification of Credits, re
27 J. F. Cauley.

28 Q. Is there any other document you wish
29 to bring before the Committee, sir?

30 A. This accompanied the salary cheque
and this is for the fourth day of the sixth month of the
year 1970, sets out the regular pay of \$519.25, gross

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1 \$519.25, Income Tax \$161.05.

2 Do you want the whole thing read?

3 Q. Sir, if I understand your point on
4 this, this is some kind of computer card that accompanied
5 the cheques that came to you after May of 1969 and you
6 place certain significance on the card because of the way
7 it is made up; is that correct?

8 A. And one extra part. There is an item
9 here that says L.T.D. Insurance and this means long term
10 disability insurance for which the employees pay. My rate
11 happened to be \$2.80 per week premium. The insurance
12 policy is paid if you are off regular employment through
13 illness, the difference is paid between what your normal
14 earnings would have been had it not been for the illness
15 and what earnings you were able to obtain after.

16 Q. Do I understand you correctly ---

17 A. The deductions then show Superannuation,
18 this is the pension fund, \$30.27.

19 Q. Just a minute. I don't want to get
20 lost in the detail of this. Was your position simply
21 this: that the computer cards firstly show under the
22 heading "Regular Pay" ---

23 A. The salary statement.

24 Q. Under the heading "Regular Pay" the
25 amount of your cheque?

26 A. Yes.

27 Q. In addition to that, there are
28 certain deductions from that cheque consistent with it
29 being salary and you place certain stress on deductions
30 for the L.T.D. or long term disability insurance?

1 A. Long term disability and super-
2 annuation.

3 Q. Is that your position?

4 A. Yes, and superannuation.

5 Q. Anything further on the card, sir?

6 I don't want to get lost in the detail of the amounts.

7 A. No, I don't think so, but I can
8 leave -- I can file a couple of cards and there is one
9 the same for the last of 1971.

10 EXHIBIT NO. 6: The Workmen's Compensation Board
11 Salary Statement, re J. F. Cauley,
dated June 4th, 1970.

12 EXHIBIT NO. 7: The Workmen's Compensation Board
13 Salary Statement, re J. F. Cauley,
dated January 7th, 1971.

14 EXHIBIT NO. 8: Affidavit of John Jackson Hollingworth.
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1 THE WITNESS: I am not sure if this -- a copy
2 of the letter of August 17th, 1965 from one Gerald
3 Campbell, Master of Photography, and it is marked as
4 Exhibit 1 and I think we put it in at the last hearing.
5 So if it is in then I have the original.

6 Q. The letter from Mr. Campbell, sir,
7 is it?

8 A. Yes. And I am pretty sure it is
9 in.

10 Q. I understand it is in. Is that
11 the total of the documents you wish to bring before
12 the Committee?

13 A. I can't think of anything else
14 at the moment.

15 Q. Are there any other statements
16 that you wish to make or evidence that you wish to
17 give, sir?

18 A. Well, I would like to make a
19 statement if I may.

20 Q. May I say this with the greatest
21 of respect to you, sir. I don't really ask you to
22 restate; I'm thinking of further evidence you wish to
23 make.

24 A. I think it may clarify what was
25 said at the beginning, that there was no thought of any
26 criminal intent in the affidavits. I swore that the
27 affidavits were not correct and I stand by that. I
28 wouldn't expect with all due respect to every person in
29 this room, I wouldn't expect that any person would
30 admit that they were correctly representing the position.

3/2 1 I mean after all, I wouldn't expect some person under
2 any circumstances and I am sorry if they have been put
3 in that position, but I wouldn't for the moment expect
4 that they would change that with which they have affixed
5 their signatures other than I say under oath, of course,
6 that it is not correct.

7 Q. Do I understand correctly, sir,
8 you are now saying to the Committee that you do not
9 expect those witnesses to come forward and make any
10 admission of a fault?

11 A. No, I do not. I wouldn't expect
12 them to do so and I wouldn't want to put them in that
13 position.

14 Q. Are we then saying that if they
15 are called and are sworn and give evidence that there
16 was no false oath that they are again before this
17 Committee taking a second and fresh false oath, sir?

18 A. No, I wouldn't, no, sir, I wouldn't
19 want to do that but I would be extremely surprised --
20 my statement is that as already has been made that there
21 was no order for personal photographs given by me and
22 there was no intent of these having been a part and
23 there were no two orders; they never left the office.
24 Had I ordered -- put in an order for them -- or part
25 of it as for personal things I wouldn't have been in
26 error taking them home. I didn't take them home because
27 they would have been my personal property and certainly
28 if that would have been the case I could have taken
29 them.

30 Q. Tell me, sir, have you now had a

1 fair opportunity before we move on to other matters to
2 bring before the Committee such matters as you intended
3 doing, sir?

4 A. Oh, yes. I don't have any axe to
5 grind at all other than the arrangement that was made
6 for me to leave in May and the sincere hope that that
7 agreement is taken, this is all. There is no person-
8 ality ---

9 Q. To translate into what I under-
10 stand, your present problem is your pay?

11 A. The thing really boils down that
12 from May the 1st of 1969 to August the 20th of 1971 I
13 was paid the equivalent of what I understood to be the
14 vice-chairman's salary as damages, but as of ---

15 Q. Just a moment, sir. I have read
16 the transcript and I think you are restating what you
17 said before.

18 A. This is all right. Other than
19 from the points I have added in support of today the
20 additional year as a consultant which, of course, I
21 didn't do until the last ---

22 Q. You now have completed the material
23 which you now wish to bring before the Committee, have
24 you?

25 A. Yes, unless there are any questions.

26 MR. DONNELLY: Mr. Chairman, I with
27 respect propose examining Mr. Cauley about matters upon
28 which he has touched today and on his earlier testimony.

29 Now, sir, in this respect the statement
30 you may give out the princip area -- that I made I

1 suppose -- the principal area is relative to the quest-
2 ion, that is, severance money or payment or whatever it
3 may be called?

4 A. Yes.

5 Q. And it may assist the Committee in
6 dealing with this matter if I could touch on a few points
7 there, sir. I don't propose going through the matter
8 again, but just briefly recapping your position, it hinges,
9 I take it, on the discussions with Mr. Bales?

10 A. Yes.

11 Q. And unfortunately for us now, that
12 was a discussion rather than a written record?

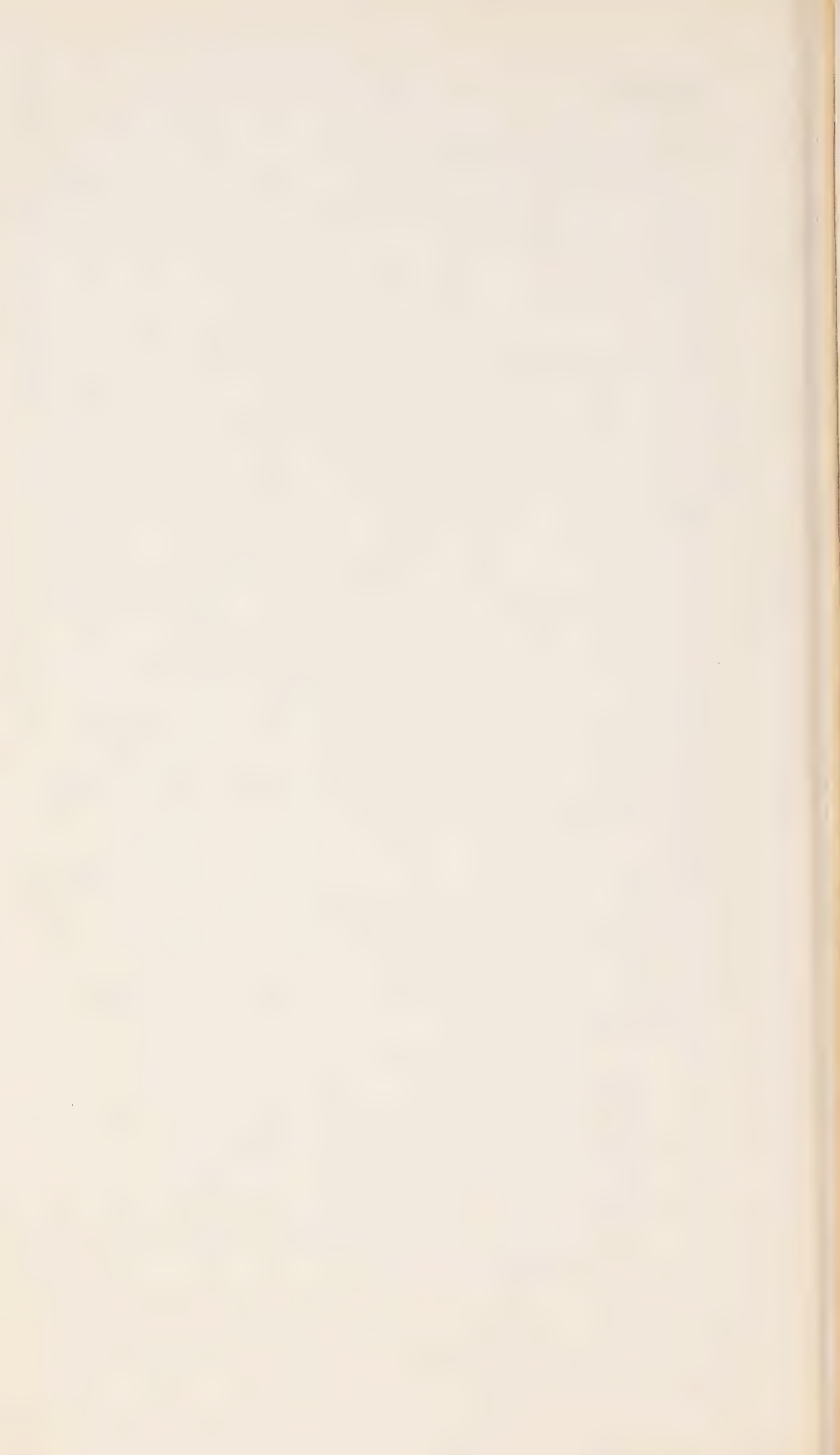
13 A. There was nothing written.

14 Q. And although that in three weeks
15 from now will be an event of three years ago it was a
16 matter that dealt with your money and finances and there-
17 by directly concerned you I suppose?

18 A. Well, to the point of if there had
19 been a clear understanding at the time I said before and
20 I should with all due respect to you, Mr. Donnelly,
21 repeat it, I could have taken my accumulated credits and
22 got right out to work.

23 Q. I don't want to be disrespectful to
24 you or the Committee, but I think that is before the
25 Committee. The point I am making is where there is a
26 conflict between your recollection and Mr. Bales, your
27 recollection is in your mind that to be superior because
28 it dealt with your pocket?

29 A. Well I think not only that, but the
30 day that I left Mr. Bales office the first thing I did



1 was contact Mr. Canary, my solicitor in Hamilton, and
2 say, "Well, forget about the incorporation." So that
3 it was just that clear. I called Mr. Canary within the
4 hour that I was going to be on salary. I reported to
5 the railway where I am on a definite leave of absence
6 that I am on salary so I can't exercise my seniority
7 if you will. So it isn't a case of going back three
8 years and trying to remember. This took place the day,
9 the very day ---

10 Q. Mr. Cauley, I think you told us
11 before that there were maybe five of these positions
12 that you ---

13 A. Yes.

14 Q. But the point is the discussion
15 between you and Mr. Bales, you apparently have different
16 recollections about them in certain aspects.

17 Would you agree with that?

18 A. No, I don't. I am not too clear
19 on just what you mean were we different.

20 Q. There certainly appears today to
21 be some difference on how you recall the terms of
22 severance, sir.

23 A. Not that I can recall.

24 Q. Well, in any event, one thing I
25 did notice on reading the transcript and I noted them
26 here if you want me to give them to you, sir, different
27 times you said you trusted Mr. Bales implicitly?

28 A. Yes.

29 Q. That you didn't doubt his sincerity
30 or honesty and you wanted to see again Mr. Bales and

1 the statements that I ---

2 A. At this time.

3 Q. So it was at this time a conversat-
4 ion between two honourable gentlemen; is that correct,
5 sir?

6 A. There was no hostility if this is
7 what you are getting at.

8 Q. I'm not speaking so much of the
9 hostility, but again in reading the transcript it
10 appeared to me that many times, and again I can document
11 these for you if you wish, but you repeat in the state-
12 ment that Mr. Bales said to you, "Jack, you won't lose."

13 A. "You won't lose," yes, I remember
14 that.

15 Q. Tell me, sir, I want to touch just
16 briefly on the affidavits by Hollingsworth and Bancroft
17 and you described to the Committee in some detail at the
18 last of the hearings the circumstances of the four men
19 in gowns or silk or whatever taking the affidavit?

20 A. Yes, I did.

21 Q. Tell me, sir, were you describing
22 something that you had seen or something rather that you
23 had heard about?

24 A. Well, in the first place when the
25 incident took place I was in my office and Dr. Steele
26 was in his office.

27 Q. Just answer me this: Did you see
28 the affidavit sworn?

29 A. No, I didn't know there were
30 affidavits for some time after.

1 Q. But when you speak of the in-
2 timidation or whatever it was of the men in silk, the
3 ultimate compulsion, you didn't see that yourself?

4 A. No, I just saw the girl coming
5 back in through the office into Dr. Steele's.

6 Q. And when you spoke of her being
7 sedated by Dr. Steele, were you present when that
8 happened, sir?

9 A. Oh, yes. Dr. Steele said to me
10 after, "She will quieten down after a while and I
11 think she'd better go home."

12 Q. You also spoke about Miss Dunlop
13 taking her away. I don't suppose you know just where
14 she went or where she was taken?

15 A. No, I didn't know whether she took
16 her home or whether she took her down to have her
17 taken home.

18 Q. You spoke also at that time about
19 being concerned about Mrs. Bancroft because she was
20 in the support of a widowed mother?

21 A. Yes.

22 Q. Do you know whether Mrs. Bancroft
23 died July 21st, 1963, sir?

24 A. I'm not sure of the date; it
25 could have been. I was at the funeral.

26 Q. So that these matters about the
27 affidavit of which you spoke so fully the other day
28 were matters that you didn't actually see or be pre-
29 sent for?

30 A. I didn't know they were affidavits

1 until, oh, Mr. Rowntree -- I got them from him some
2 considerable time later.

3 Q. Tell me, sir, have you got the
4 original of the Bancroft affidavit available?

5 A. Yes, I do.

6 Q. I wonder if that could be filed
7 with the Committee?

8 Is that your document, sir, or the
9 Board's document?

10 A. It doesn't belong to the Board. The
11 document was given to me by the then Board's solicitor
12 and I took them and had them locked up.

13 Q. Who was that, sir, the Board's
14 solicitor?

15 A. Mr. Lane.

16 Q. Probably we could go on and Mr.
17 Humphrey could file that for us.

18 A. I have got it here.

19 EXHIBIT NO. 9: Affidavit of Florence M. Bancroft.

20 MR. DONNELLY: Q. Mr. Cauley, I don't
21 want to examine you without you listening to me here.

22 A. Do you want both of them?

23 Q. If you would. Mr. Cauley, there
24 is one other matter I would like to touch on if I
25 could probably to assist the Committee and that deals
26 with the Hickling and Johnston Report, the management
27 report.

28 A. Yes.

29 Q. And on page 6 in the last day you
30 referred to Mr. Bales statement you knew it was a

1 management study and then you went on to say, "Let me say
2 and I am still under oath that I
3 had no knowledge whatever of any
4 firm doing consultant or efficiency
5 work or anything else as to the
6 salaries or classifications."

7 Then you say if someone discussed it the Committee should
8 tell you about it.

9 A. Of the Board, because I said nobody
10 from that firm had interviewed me so I didn't know how
11 they could establish the qualifications for the job or --
12 I think I said too I don't think they looked at the Act
13 which created ---

14 Q. Just a moment, sir. I think the
15 records shows you as saying you had no knowledge whatever
16 of any firm doing consultant or efficiency work or
17 anything else as to salaries or classifications.

18 A. Yes.

19 Q. Is that correct?

20 A. Yes, talking about my Board members.

21 Q. Tell me, sir, do you know a Mr.

22 Marmash of the Hickling and Johnston firm?

23 A. Not by name, no.

24 Q. Would it be possible that you spent
25 some time with him on January the 6th of 1969 at your
26 office at the Board?

27 A. Talking about some of my staff that
28 I had at that time and what is now known as the administrat-
29 ion I talked to them, yes.

30 Q. Do you recall talking to them about

1 that?

2 A. About staff, yes, but not about
3 the Board.

4 Q. Was there any suggestion at that
5 time as to what your own salary might be, sir?

6 A. Not that I can recall. I remember
7 there was a group talking directly under me, I remember
8 that, but I don't remember talking about my own salary.

9 Q. Would there be any reference by
10 either of you that the vice-chairman's salary should be
11 \$35,000?

12 A. I don't recall that because I think
13 it was around \$20,000 at the time.

14 Q. Tell me, sir, the Board granted
15 approval to the retaining of the consultant firm of
16 Hickling and Johnston by a minute dated in September of
17 1913 -- September 13, 1968 and I am going to produce
18 a copy of that.

19 A. And I signed it.

20 Q. Just a moment, sir, please. I am
21 going to produce a copy of that Board order and it
22 appears to have been signed by Mr. Legge and Mr. Cauley
23 and Mr. Johnston. Normally, sir, I would come to you
24 with this but I am pretty well tied to this microphone
25 and I would ask Mr. Watt if he might do it.

26 Can you tell me if you could recognize
27 that, sir, as being your signature?

28 A. I would think I remember it.

29 Yes, that is my signature.

30 Q. And you would then be aware that

1 the report was authorized?

2 A. Yes.

3 Q. Is it again your situation that it
4 did deal with you as vice-chairman?

5 A. Yes, because I recollect that in
6 January dealing with my staff, but I don't ever remember
7 them dealing with me as what my classification should be
8 and \$35,000 doesn't ring a bell.

9 Q. Sir, I am going to produce an inter-
10 departmental communication of the following day,
11 September 19, 1968, on the subject matter of the
12 Management Consultants' Review of Management Salaries
13 and it will say that on September 13th the Board ordered
14 Hickling and Johnston to be appointed to evaluate manage-
15 ments' salary standard and it is recommended that the
16 following positions should be reviewed: "Chairman, Vice-

17 Chairman, Commissioner, Executive
18 Manager,..." etc.

19 At that time, sir, the office of Vice-Chairman would
20 relate to you, wouldn't it?

21 A. It should have, yes, in January.

22 1969?

23 Q. September, 1968, sir. It appears to
24 have been signed at the bottom by Mr. Legge and Mr.
25 Cauley.

26 Would you again tell me if you recognize
27 that, sir?

28 EXHIBIT NO. 10: Minute page 3594, Sept. 13/68.

29 EXHIBIT NO. 11: Inter-Departmental Communication,
30 dated September 19, 1968.

3/11

1 A. Yes, that's my signature.

2 Q. That would appear to be one of the
3 things for the management to consider as the management
4 position and vice-chairman; is that correct?

5 A. It could be from that, yes.

6 Q. It appears that way from the document
7 anyway, doesn't it?

8 A. Yes.

9 Q. I am going to produce to you, sir,
10 an agenda of the meeting on Friday, February 7th, 1969
11 and the 12th item on the agenda is the name Hickling
12 and Johnston, Management Consultants, and the minute
13 appears to be signed on the bottom by Mr. Legge, Mr.
14 Cauley and Mr. Johnston. Could you tell me if you
15 could identify that for me, sir, please?

16 A. That's my signature but I wouldn't
17 say that is the date.

18 Q. I see; thank you.

19 A. Oftentimes in the staff book two
20 members would sign it and it would be -- or one sometimes
21 and it would be brought around -- it is my signature but
22 I certainly couldn't identify the date because that is
23 the way they ---

24 Q. Would those three documents assist
25 you in refreshing your memory, sir, can you help your
26 ability as to the accuracy of the statement made in the last
27 hearing by yourself to this extent or this effect:

28 "Let me say, and I am still under oath,
29 that I had no knowledge whatever of any
30 firm doing consultant or efficiency work

1 or anything else as to salaries or
2 classifications. I was not told of it so
3 I had no knowledge of it."

4 A. What I was referring to at this
5 time was my own personal salary and position and I knew
6 of course they were in full staff.

7 Q. So you would qualify that as it
8 related only to yourself?

9 A. Yes.

10 Q. And the second document I gave you?

11 A. This was the intent.

12 Q. The second document I gave you
13 dated September 19th rather indicates under your own
14 signature that your own salary is under consideration
15 and you say you had no knowledge of that?

16 A. Well, to the point that the firm
17 would follow through with Board signatures, but I came
18 back to say that I don't ever recall them in January or
19 any other time coming to me on my personal -- I knew they
20 were referring but I am talking about the personal thing
21 because this came up through a long term disability.

22 Q. Tell me, sir, if Mr. Marmash is
23 called as a witness, if his evidence generally were that
24 if he were employed by Hickling and Johnston and in
25 January of 1969 he did speak to you about your salary,
26 would you be prepared to contradict that, sir?

27 A. No, I wouldn't contradict it because
28 I don't -- but my recollection is we talked about the
29 people that were directly working for me and that we
30 didn't get to my -- if he says we did I am not going to

4/3

1 contradict him.

2 Q. So it's not a question of denying
3 it, it's simply your recollection doesn't carry you to
4 that point of agreement?

5 A. Through to that point, because
6 \$35,000.00 doesn't register at all with me.

7 Q. And that recollection is of events
8 in the calendar year 1969?

9 A. Yes.

10 Q. You wouldn't want to test your
11 own recollection against some record that he may have?

12 A. No, he may have a record that I
13 haven't seen, or he may have made notes that I wouldn't
14 have seen.

15 Q. Partly I suppose because of the
16 lapse of time involved; you agree that you have certain
17 frailties and memory is one of them?

18 A. This could be, but I am pretty sure
19 that if \$35,000.00 would have been mentioned I would
20 have remembered that. That was a way, way up.

21 Q. I would have thought so too, sir,
22 yes.

23 A. I have no recollection of \$35,000.00.

24 Q. There is another matter, sir, that
25 I want to speak to you about and that was on the last
26 hearing there was some reference made to the Hansard
27 report that you had missed certain time or been away
28 periodically and you produced certain records at that
29 time, and I think you said your "first day in 1969 that
30 I was away from the Board was April 15th and I never

4/4

1 returned."

2 A. We are talking about illness now,
3 we are not talking about away, because we had three or
4 four meetings.

5 Q. I am simply quoting your evidence
6 here.

7 A. Yes.

8 Q. But I think fairly put you did
9 refer to illness.

10 A. Yes.

11 Q. Your statement was then that for
12 this reason the first day you missed was April 15th and
13 you didn't return?

14 A. That's right.

15 Q. I am going to produce for you and
16 ask if you can identify a copy of the Daily Journal of
17 the Board's assistant secretary, Mr. Ken Harding and if
18 you are able to do so I am going to ask you if you know
19 the practice of noting at the top of the record the
20 persons who were not present for that day. And I am
21 also going to ask you if you can identify from that
22 record if the record^{is} true that you were absent from the
23 7th of April to the 15th of April, 1969.

24 Now I can come back to this -- I don't
25 want to confuse you but just so you will know where I am
26 going -- and I will then ask you that on Tuesday, April
27 4th there were four appeal hearings and an agenda meeting;
28 on Wednesday, April 9th there was a principal officers
29 meeting; on Thursday, April 10th there were three appeal
30 hearings; on Monday, April 14th there was an appeal

4/5

1 hearing and an agenda hearing and that you were not
2 present at any of those.

3 Now I will come back to that and I
4 realize there is quite a bit there and I want you to
5 realize where I was going. Will you take a look at this
6 and see if you can identify it, sir?

7 A. Is April the 4th the first one?

8 Q. The record starts on April 7th I
9 was dealing with, sir.

10 A. No, I think I said I intended to be
11 away and I had had my book marked up beginning April 7th;
12 because of an illness of my youngster we didn't go away
13 and I came back in and asked and told my secretary to
14 have that noted in the personnel department and this is
15 what I offered as an Exhibit.

16 Q. I am asking now, sir ---

17 A. These things I have no knowledge of.

18 Q. Do you recognize that document?

19 A. No, I don't; I have never seen it.

20 Q. Tell me, sir, do you know the
21 assistant secretary and the secretary also keeps a
22 daily record?

23 A. Could be.

24 Q. Just a moment, please. These may be
25 identified by other witnesses of course but I am going
26 to ask if you recognize that photocopy of that record?

27 A. Under the heading of "Sunday",
28 certainly we don't meet on Sundays.

29 Q. Sir, are you familiar with the
30 practice of noting the names or the initials of absentees

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1 on the top?

2 A. No, I've never seen this, sir.

3 In all my time at the Board.

4 Q. I am suggesting to you, sir, your
5 initials appear at the top on each day from Monday,
6 April 7th to Monday, April 24; is that correct?

7 A. It's not in my writing.

8 Q. I see. I am also suggesting to you,
9 sir, that the hearings and the times on those dates have
10 been checked and it appears from these initials that you
11 did not appear on any of them?

12 Do you agree or disagree with that?

13 A. On which, on the 8th of April?

14 Q. On the period from 7th of April
15 to 24th of April, 1969?

16 A. No, I wouldn't say that because
17 that doesn't coincide with my book.

18 Q. Tell me, sir, can you tell me if
19 you have any record of any specific thing that you did
20 at the Board in the period from the 7th of April, 1969
21 to the 15th of April?

22 A. No, I would have to see the file
23 and the transcript before I would be able to answer
24 that because I made some notes on January and February,
25 but in that week no --- and these aren't in my writing.

26 Q. Is it possible, sir, that you are
27 mistaken and that you may have been absent from the
28 Board from the 7th of April to the 15th?

29 A. No, I don't think so, because I
30 was back to tell my secretary to change the date that I

4/7 1 was away. But if I was away on the 7th, I mean I am not
2 making any point of that, but the point I was making
3 was that in the majority of hearings, appeal hearings
4 in the three years of questioning, that as long as I
5 was on holidays or away from the Board on Board business
6 I was at every hearing.

7 Q. I think you said before you were at
8 95% of them?

9 A. About 95% in those three years, I
10 would say.

11 Q. Sir, the only point that I raise is
12 that you saw fit to challenge the statement in Hansard
13 about your absence, and on the basis of that challenge
14 you swore that you were present to the 15th of April
15 excluding -- there was no absence for illness and I just
16 wonder if you have anything further to put to them
17 relevant to these records?

18 A. I think Mr. Bales said I was off
19 and on a number of times, I think is what ---

20 Q. He used the word "periodically".

21 A. Periodically. Well I wasn't away
22 periodically for any illness. I was away -- I can give
23 you the dates and where I was on official Board business
24 in January and February.

25 Q. April 7 to 15 I was concerned with.

26 A. I would have to go back and check.

27 Q. Can you give me any information
28 in that interval, sir?

29 A. No, not in that interval, no, not
30 without further checking. I would have to ---

4/8

1 Q. Tell me, sir, if those documents
2 are later identified, the later records, and explained
3 as indicating your absence on that date ---

4 A. Not on that ---

5 Q. Just listen to me please: the
6 documents are identified and explained as indicating your
7 absence in that interval April 7th to April 15th, without
8 any documentation of your own and relying on your memory,
9 do you see fit to challenge it?

10 A. I would have to see them first.

11 Q. I am sorry, sir, you have just seen
12 them.

13 A. Oh, well I am not -- no, I wouldn't
14 accept those because there are many reasons I don't want
15 to mention here -- I would want to see the actual claim
16 file, the decision that went out to the workmen, the
17 court reporter's record of the hearing before I would have
18 been able to say yes or no.

19 Q. Can you identify the document
20 apparently signed by your secretary, Miss Whitmore, sir,
21 I am now producing?

22 A. Yes, I imagine that is her writing.
23 This is what I presented last week.

24 Q. It is not identical, is it? The one
25 you presented I think had been changed in ink or something,
26 hadn't it?

27 A. Yes, this one has been changed -- this
28 was my copy that I presented and I am sure that she will
29 identify that that ink is in her writing.

30 Q. Now, there is another matter, sir,

4/9

1 | that you may ---

2 | MR. LAWLOR: Mr. Chairman, may I interject?

3 | This is just the kind of thing we were concerned with.

4 | I heard Mr. Cauley say, "For many reasons which I may
5 | not wish to mention here " and then the evidence goes on.

6 | Now those reasons seem to be pertinent to this Inquiry.

7 | Are we going to take them up subsequently or are we
8 | going to take them up now, or what do we propose to do
9 | with those reasons? I think those reasons have to be
10 | mentioned here; that's why we are here.

11 | THE WITNESS: Let me modify it by saying
12 | that until I ---

13 | THE CHAIRMAN: Your point is taken, Mr.
14 | Lawlor.

15 | THE WITNESS: May I say that unless I saw
16 | the file, the notice to the workmen, the court reporter's
17 | record of the hearing, I wouldn't be in a position to say
18 | yes or no. We are only talking about the one week.

19 | MR. DONNELLY: Q. There is another matter,
20 | sir, that I wanted to speak to you about, and that was
21 | the question of the 1968 amendments to the Act flowing
22 | from the Royal Commission Report of Mr. Justice McGillivray
23 | and your statements, sir, on Page 18 of the last day was
24 | that the 1968 amendments, the first that you knew of them
25 | was when you read -- when the first reading was tabled
26 | in the House; is that correct, sir?

27 | A. I think this is what I said, but I'm
28 | not sure whether it was the first reading in the House
29 | or not, but the first that I heard of them that the
30 | Government was taking action; let's put it that way.

1 It wasn't in the House as I recall it now.

2 Q. Are you telling the Committee, sir,
3 that you have no prior knowledge of the amendments prior
4 to reading it in the House?

5 A. No. What I am saying is that I had
6 no prior knowledge of the amendments of 1968 until we
7 were in the anti-room or Cabinet room and I was instructed
8 not to say anything and said it would only -- I forget
9 the words Mr. MacDonald used and Mr. Johnston and I
10 were sitting in the Cabinet room at the back wall and
11 Mr. Legge, Mr. Poole and Mr. MacDonald were at the
12 Cabinet table when all the discussion, and I said to the
13 Minister when the meeting was over and we were on our
14 way out in the anti-room I presume that ---

15 Q. Mr. ---

16 A. --- that this will get you in trouble.

17 Q. Mr. Cauley, going back -- the record
18 shows you have stated that the first you knew of them
19 was when they were read -- the first reading tabled in
20 the House.

21 As I recall the transcript of the last
22 day Mr. Bales later in the Hearing pointed out that it
23 is necessary for the Legislation to come before Cabinet
24 before it is put to the House?

25 A. I agreed with him. I got it from
26 up there, this is where I got it.

27 Q. And that really was the correct
28 situation and what you meant to say?

29 ---EXHIBIT NO. 12: Agenda of Meeting of Board members
30 dated January 27th, 1969.

/11

- 1 ---EXHIBIT NO. 13: Agenda of Meeting February 7, 1969.
- 2 ---EXHIBIT NO. 14: Copy of Appointment Book from
3 April 8 - 18, 1969.
- 4 ---EXHIBIT NOS. 15 Copy of Appointment Calendar for the
5 and 16: month of April.
- 6 ---EXHIBIT NO. 17: Letter from A. Whitmore to the
7 Vice-Chairman dated May 12, 1969.
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1 Q. Prior to that, sir, did you not have
2 knowledge of it?

3 A. No, I had no knowledge, until the
4 Minister had accepted them, this is the first knowledge
5 I had.

6 Q. I suggest to you, sir, an order was
7 made on the 13th of November, 1967, that a working
8 committee prepared position papers on this matter. Did
9 he know about that?

10 A. Yes.

11 Q. And would you have knowledge that
12 that was being done?

13 A. Not the contents of what they were
14 doing.

15 Q. Can you identify the order of the
16 Board which appears to bear your signature on that day?

17 A. Oh, yes, the Committee was set up,
18 but I had no knowledge of their deliberations.

19 Q. That is your signature, sir, is it?

20 A. Oh, yes.

21 Q. And I am going to suggest to you,
22 sir, and this may again be the subject of other witnesses'
23 evidence, but meetings of that Committee with the Board
24 were held on the 13th of November, 1967 and during that
25 interval up until the 15th of January, 1968 would you
26 have any recollection of that?

27 A. Without the notes or the minutes
28 I wouldn't know.

29 Q. And would you have any recollection
30 of even attending any of those meetings?

1 A. Most likely I did.

2 EXHIBIT NO. 18: Minute page 3519, November 13, 1967.

3 MR. DONNELLY: Q. And would you have some
4 notice then as to what was being discussed relative to
5 the amendments?

6 A. Maybe it was something that was
7 being discussed, but certainly not what was ever
8 finalized or what was going to the Minister as the
9 official Board position, no. This is one of the things
10 I objected to.

11 Q. So that at no time did you have
12 any indication as to what was going forward to the
13 Minister then?

14 A. No, because we didn't meet with
15 the Minister as a corporate body. I didn't know what
16 was agreed to over there. We used to get a report back
17 or at least I did indicating that this is what the
18 government wants.

19 Q. Who was Mr. Kerr at that time? Was
20 there a Mr. Kerr on the Board?

21 A. He is not a member of the Board; he
22 is a member of the staff.

23 Q. A member of the staff. I want to
24 produce to you a letter apparently written by the
25 Chairman of the Board, February 12, 1968 to the Minister
26 and enclosed are certain recommendations and the hand-
27 written note by Mr. Kerr which appears to say, "Mr.
28 Legge, Mr. Cauley agrees with these papers," February
29 12, 1968. Will you tell me if you can identify that,
30 sir?

1 A. I have no recollection whatsoever
2 of that.

3 EXHIBIT NO. 19: Letter dated February 19, 1968 from
4 the Chairman of the Board to Mr.
Bales, Minister of Labour.

5 MR. DONNELLY: Q. Do you recognize the
6 writing of Mr. Kerr?

7 A. No, I couldn't identify Mr. Kerr's
8 writing.

9 Q. Do you recognize his signature?

10 A. No, I don't.

11 Q. Do you recognize it as not being his?

12 A. No, I couldn't tell you. I haven't
13 seen enough of Mr. Kerr's handwriting to know.

14 Q. May that be filed subject to later
15 identification?

16 Also, sir, the statement was made under
17 oath to the Committee of the last day that the Act
18 provides for compulsory or normal retirement for a member
19 of the Board at age 75 and you had no intention of
20 retiring at 65 and it went on to say don't have anybody
21 running in and saying this is normal for the Board.

22 Would you agree with me, sir -- I think you
23 were appointed back in was it 1944?

24 A. January the 1st, 1944.

25 Q. And the vice-chairman in 1946?

26 A. No.

27 Q. In any event, 1944?

28 A. '46, I think.

29 Q. Do you agree with me in 1945 there

30 were only eight members of the Board, Mr. Galbraith, Mr.

5/4

1 Morrison, Mr. Steele, Mr. Sparrow, Mr. McAuliffe, Mr.
2 Legge, Mr. Hamilton and Mr. Decker?

3 A. Yes, that's right.

4 Q. Three of those have not yet retired,
5 Legge, Hamilton and Decker; is that right?

6 A. That's right.

7 Q. And then there are five and one of
8 which is you; is that correct?

9 A. Yes.

10 Q. And Mr. Morrison was appointed in
11 1943 and died in 1947; is that correct?

12 A. That's correct. I wasn't aware of
13 his age, but certainly he was over 65.

14 Q. Many members -- Dr. Galbraith
15 retired at 65; would that be so?

16 A. I'm not sure. He went in for a
17 cancer operation on his throat, but it would be close
18 to that. I wouldn't be sure.

19 Q. Dr. Steele retired at age 63; would
20 that be correct?

21 A. I think so. He retired in '68.

22 Q. And Mr. Sparrow retired at age 65?

23 A. Yes. He would retire before that
24 I guess, because of his health.

25 Q. Are you familiar with the super-
26 annuation plan for the employees and the Board members?

27 A. Yes.

28 Q. And would you agree that clause 5
29 under that plan provides that the eligibility for normal
30 pension and agrees that normal retirement age is 65

1 years for all members?

2 A. Except the Board. I was the one
3 who brought the Board members into the pension plan. The
4 Board members were excluded from the pension plan so I
5 am quite familiar with it.

6 Q. Well I'm asking you if that's what
7 it says, sir?

8 A. Oh, yes, this is what it says.

9 Q. When it refers to the normal retire-
10 ment age as being 65; is that correct?

11 A. That is correct, sir.

12 Q. That is relative to your statement,
13 "Don't have anyone running in here to say that it's
14 normal for the Board to retire at 65."

15 A. If I may just qualify that for the
16 Committee since this is an investigation. When pension
17 regulations were amended to include members of the
18 Board, if we take the limitations off that and in
19 effect we discussed/ the late N.D. Warnoth, who was
20 certainly a legal authority dealing with Workmens'
21 Compensation and the Minister and they said, "Well, it's
22 up to the Lieutenant Governor in Council as far as the
23 Board member is concerned so we are not going to change
24 the regulations again. But a Board member who stays on
25 beyond 65 can't continue to build up his pension in
26 those succeeding years." This is the intent.

27 Q. Are you finished, sir?

28 A. Yes.

29 Q. Thank you.

30 Dealing, sir, now, after you left the

1 Board in May of 1969 you wrote to the Board on April the
2 13th in your own handwriting of 1970 referring to the
3 retroactive cheque. Do you identify this letter, sir?

4 A. Yes, I remember that.

5 Q. And in there you refer to credit
6 referred to in later years and that's referring to the
7 retroactive salary increase?

8 A. Yes, late '69.

9 EXHIBIT NO. 20: Letter from Mr. Cauley to the Board,
10 dated April 13, 1970.

11 MR. DONNELLY: Q. Can you identify the
12 reply to that letter from Mr. MacDonald, dated April 21,
13 1970 addressed to Jack Cauley, part of which refers to,
14 "Following your resignation from the
15 Board effective May 1st, 1970,..."
16 and that is then struck out and written in pen "1969".

17 "...the sum of \$18,173.75 was paid
18 to you arising out of attendance and
19 vacation credits which you had earned."
20 Can you identify that letter, sir?

21 A. Yes, I recall this.

22 Q. Did you get that letter, sir?

23 A. Oh, yes, I received this letter.

24 Q. When you got it did you do anything
25 about it?

26 A. In 1970, yes.

27 Q. Now, tell me, what is the significance
28 to the reference of vacation credits there?

29 A. I am not sure, but that came about
30 because of a notice in the paper that indicated that

1 the vice -- I think it is the vice-chairman's salary
2 was then \$33,000 and I wondered why I didn't come up to
3 it or get my longterm disability.

4 EXHIBIT NO. 21: Letter from the Board to Mr. Jack
Cauley, dated April 21, 1970.

5 MR. DONNELLY: Q. May I direct your mind
6 back to the reference in that letter of vacation credits,
7 sir?

8 A. Yes.

9 Q. If your position is correct you
10 weren't getting any vacation credits?

11 A. Salary, yes, that is correct.

12 Q. So that letter is not consistent with
13 the fact you were being paid salary?

14 A. I would say that.

15 Q. Also the reference to attendance
16 credits or attendance and vacation credits, again that
17 is inconsistent with your statement of salary; is that
18 correct?

19 A. Yes.

20 Q. Also, sir, with that letter there is
21 a schedule showing the sum of \$18,000 odd, how it was
22 made up, and it showed a retroactive adjustment in your
23 salary for the years 1967 and 1968 to be 8,125.00.

24 Is that correct?

25 A. Yes.

26 Q. And in the year 1969 for the period
27 January 2 to May 1st when you left the Board a retro-
28 active increase of \$2,250; is that correct?

29 A. Yes.

30 Q. And subsequent to that for the balance

1 of the year an increase of \$4,375?

2 A. I took that as salary.

3 Q. The increase being at the rate of
4 \$125 a week, I believe?

5 A. Well ---

6 Q. Perhaps you can identify the schedule,
7 sir, if you recognize it?

8 A. I would say because I don't have
9 anything to contradict it. I would accept that.

10 EXHIBIT NO. 22: Schedule of pay adjustments for Mr.
11 Cauley, dated April 20, 1970.

12 MR. DONNELLY: Q. Also, sir, on August
13 9th, 1971 I am going to produce to you a letter to Mr.
14 Riddell, Secretary of the Board, sent by Registered Mail
15 simply saying, "Kindly arrange for my Medical,
16 Hospitalization Insurance and Credit
17 Union programmes to be continued
18 subsequent to August 20, 1971 in the
19 normal manner."

20 Signed, John F. Cauley.

21 Can you identify that?

22 A. Yes, I can.

23 Q. That letter would rather seem to
24 indicate, sir, you were intending going on normal retire-
25 ment?

26 A. Yes.

27 Q. Just a normal switch to your pension
28 on your 65th birthday; would you agree with that?

29 A. Yes, because I was going on to other
30 employment at 65, more remunerative.

1 Q. You have already filed this morning
2 as one of your documents a letter from Mr. Johnston to
3 you August 18, 1971 and you place stress on the words,
4 "attached is your final salary cheque."

5 A. That's correct.

6 Q. You drew to the Committee's attent-
7 ion the word "salary"?

8 A. Yes.

9 EXHIBIT NO. 23: Letter from Mr. Cauley to Mr. Riddell,
10 Secretary of the Board, dated
August 9, 1971.

11 MR. DONNELLY: Q. The sentence goes on
12 to say, "Attached is your final salary
13 cheque under the Board's early retire-
14 ment plan."

15 Is that any significance on that with reference to the
16 early retirement plan, sir?

17 A. Not to me. I couldn't understand it.
18 I couldn't understand what those words meant. Because
19 if I read or interpreted it literally this would mean
20 that I was going on until I was 75 which wasn't the case.

21 Q. Are you suggesting to the Committee
22 that you were supposed to go on to 75?

23 A. No.

24 Q. Pardon me?

25 A. No, I have no intention of going to
26 75. Although I want to stress that the Act provides for
27 it, but I have no intention of going on until 75.

28 Q. I suppose it would be facetious to
29 suggest that, would it?

30 A. Yes. I think what I said was under

1 the Act I could stay until I was 75, but you couldn't
2 build up your pension. You couldn't add to your pension
3 beyond 65.

4 Q. Now, also, sir, the letter on August
5 9th, 1971 written by Mr. Riddell, the Secretary of the
6 Board, to you regarding your superannuation and that
7 encloses certain documents in connection with it and can
8 you identify that document and tell me if you got it?

9 A. Yes, I received it.

10 Q. And did you complete and return the
11 documents as requested?

12 A. I must have, yes.

13 Q. Did you do anything at that time to
14 indicate you were doing anything other than going on
15 pension in the ordinary manner?

16 A. As far as the Board was concerned,
17 no. I was moving out into other employment, you see.

18 EXHIBIT NO. 24: Letter with attached documents to
19 Mr. Cauley from Mr. Bale, dated
August 19, 1971.

20 MR. DONNELLY: Q. Well, also, sir, a letter
21 August 30th, 1971 enclosing your first pension cheque
22 in the amount of -- the gross amount really was \$1,206.37.
23 Can you identify that letter?

24 A. Yes.

25 EXHIBIT NO. 25: Letter from Mr. Bale to Mr. Cauley,
26 dated August 30, 1971.

27 MR. DONNELLY: Q. Also, sir, there is
28 another matter I might touch on. It was the subject of
29 some discussion at the last Hearing as to how the sick
30 credits were kept, who actually kept track of days off
and so on. Can you identify the document that I now

5/10

1 produce, sir, an inter-departmental communication under
2 date November 23rd, 1965, "Subject matter, Board Member's
3 Records.

4 The Personnel Department is quite
5 prepared to keep a record of each of
6 the Board Members concerning absence
7 because of illness or vacation."

8 And the recommendation at the bottom, "Recommend a record
9 concerning absence through holiday or
10 illness of each of the Board Members
11 be kept in the Personnel Department."

12 Can you identify that?

13 A. Yes. This was started by Mr. Rown-
14 tree as Minister of Labour.

15 EXHIBIT NO. 26: Inter-departmental communication to
16 Mr. MacDonald from Mr. Hollingsworth,
dated November 23, 1965.

17 MR. DONNELLY: Q. Miss Whitmore was your
18 secretary at that time, was she?

19 A. Miss Whitmore and Miss Bancroft. At
20 65 -- oh, wait a minute.

21 Q. I think Miss Bancroft had moved on
22 then with great respect.

23 A. It could be. There was a Miss Keens
24 in there too, but you could be right.

25 Q. In any event, sir, another inter-
26 departmental communication under the signature of A.
27 Whitmore, dated December 8th, 1965, "Subject: Absence
28 due to illness and Vacation records
29 of J.F. Cauley, Vice-Chairman.

30 In accordance with your I.D.C.

1 of November 23rd to Mr. MacDonald
2 and Board approval of December 3, 1965
3 attached find copy of my records
4 concerning Mr. Cauley's vacation
5 entitlement.

6 From January 1, 1944, until
7 March 22, 1965,..."

8 which is a period of 21 years past.

9 "...Mr. Cauley had no absences from
10 the office due to illness -- March 22,
11 1 day."

12 And then it goes on to refer to March 1965 when you were
13 away with heart attack, 79 days. Can you identify that
14 document, sir?

15 A. I would accept that was Miss Whitmore's
16 from the records we kept.

17 Q. Do you recognize her signature?

18 A. Yes, that is her signature.

19 Q. Then, sir, I am going to suggest to
20 you that after that time you kept scrupulous track of
21 your holidays and in addition gave advance notice to the
22 Board as to when you expected to take your holidays.

23 Would you agree with that?

24 A. No, I wouldn't, sir. I would say
25 at the beginning of 1944 I was most scrupulous.

26 EXHIBIT NO. 27: Inter-departmental communication from
27 Miss Whitmore to Mr. J. Hollingworth,
dated December 8, 1965.

28

29

30

1 Q. Probably we can go on from '65
2 anyways, sir. Can you identify this document, May 30th,
3 1966, "Subject: 1966 Vacation.

4 It is my intention to take my 1966
5 holidays beginning July 11th through
6 August 5th. (4 weeks).

7 (signed)

8 J. Cauley,
9 Vice-Chairman"

10 EXHIBIT NO. 28: Inter-departmental communication
11 to Personnel Department from J.
12 Cauley, dated May 30th, 1966.

13 A. Yes. This was normal procedure for
14 me to have put in in advance.

15 Q. During that interval of your holidays
16 another document, July 22nd, 1966, signed by A. Whitmore,
17 simply saying this:

18 "Mr. Cauley was asked to be an honorary
19 pallbearer at the funeral of the late
20 Joseph Connolly. Mr. Connolly was
21 President of Local 46 of the Toronto
22 Plumbers and Steamfitters Union. It was
23 necessary for Mr. Cauley to be in Toronto
24 on business in connection with this on
25 July 20th and 21st. Would you please
26 return two days holiday to Mr. Cauley.

27 (signed)
28 A. Whitmore"

29 Can you identify that?
30

6-2

1 A. Yes, this is right.

2 EXHIBIT NO. 29: Inter-Departmental Communication
3 to Personnel Department from
4 A. Whitmore, dated July 22nd, 1966.

5 Q. In the same interval, sir, another
6 memo, August 9th, 1966:

7 "Mr. Cauley was invited to be a guest of the
8 Provincial Building Trades Council Executive
9 at its meetings in London on August 2 and 3.
10 Would you please return two days holiday to
11 Mr. Cauley.

12 (Signed)
13 A. Whitmore"

14 Can you identify that, sir?

15 A. Nineteen sixty-six?

16 Yes, that's right.

17 Q. And then again, in 1967, advance notice
18 to the Board that you are taking holidays March 9, 1967:

19 "Mr. Cauley plans on taking two weeks' holidays,
20 one week commencing March 27th and the other
21 week commencing April 17th.

22 (Signed)
23 A. Whitmore"

24 Can you identify that?

25 EXHIBIT NO. 30: Interdepartmental Communication
26 to Personnel Department from
27 A. Whitmore, dated August 9th, 1966.

28 EXHIBIT NO. 31: Interdepartmental Communication
29 to Personnel Department from
30 A. Whitmore, dated March 20th, 1967.

31 A. Nineteen sixty-seven, one week
32 March 27th to 31st and one week April 17th to 31st. That
33 coincides with my records.

34 Q. And again, sir, another communication,

6-3

1 March 20th, 1967:

2 "It is my wish to take one week of my back

3 holidays March 27th to 31 inclusive, and

4 one week April 17th to 21 inclusive."

5 and it appears to be signed by you twice there. Can you

6 identify that?

7 A. Yes.

8 Q. In connection with those holidays,

9 sir, another memo dated April 5th, 1967, signed by

10 Miss Whitmore:

11 "During Mr. Cauley's holidays last week,

12 he was required to be in the office due to

13 the fire at the Centre on Friday the 31st.

14 During his week of holidays scheduled for

15 April 17-21, he will be attending a meeting

16 in St. Catharines on Friday the 21st.

17 Mr. Cauley will be taking these two days

18 on April 24th and 25th. He will have a

19 balance of 25 weeks, 1 day to his credit."

20 Can you identify that?

21 A. Yes. I am sure that is her writing.

22 EXHIBIT NO. 32: Inter-Departmental Communication
to The Board from J. F. Cauley,
23 dated March 20th, 1967.

24 EXHIBIT NO. 33: Inter-Departmental Communication
to the Personnel Department from
25 A. Whitmore, dated April 5th, 1967.

26 Q. Still in connection with your 1967

27 holidays, your April 13 memo by Miss Whitmore:

28 "In view of Dr. Steele's illness, Mr. Cauley

29 will not be taking the week of April 17-21.

30 Would you please show your records to cancel

6-4

1 | this week's scheduled vacation.

2 | However, as he worked one day during the
3 | week of holidays, March 27-31, his vacation
4 | credits should show 26 weeks, 2 days."

5 | Can you identify that, sir?

6 | A. Yes.

7 | Q. I have almost come to the end of this,
8 | sir. On the second of May, 1967, another memo signed by
9 | yourself, indicating you were taking your holidays July
10 | 3rd to 28th. Can you identify that?

11 | A. Yes. It is the same as my own record.

12 | Q. And then that was followed, sir,
13 | August 4th, 1967, by a memo from Miss Whitmore, during
14 | that holiday period you attended a meeting at the -- at
15 | the Civic Officials of Kitchener and you were to be
16 | credited back with another day?

17 | A. Yes.

18 | Q. You agree with that, sir?

19 | A. Yes.

20 | EXHIBIT NO. 35: Inter-Departmental Communication to
21 | The Board from J. F. Cauley, dated
22 | May 2nd, 1967.

22 | EXHIBIT NO. 36: Inter-Departmental Communication to
23 | Personnel from A. Whitmore, dated
24 | August 4th, 1967.

24 | Q. Finally, sir, dealing with your 1968
25 | vacation, April 3rd memo signed by yourself:

26 | "I wish to take one week from my accumulated
27 | holidays beginning May 13th and my 1968
28 | holidays the month of July."

29 | Can you identify that?

30 | A. Yes.

6-5

1 EXHIBIT NO. 37: Inter-Departmental Communication to
2 B. J. Legge, Q.C., Chairman,
3 Mr. Johnston, Mr. Poole from
4 Mr. Cauley, dated April 3, 1968.

5 Q. Again, sir, April 9, 1968, dealing
6 with your '68 holidays:

7 "He will be taking his 1968 holidays during
8 the month of July.

9 Your records will then show a balance of
10 20 weeks and 4 days.

11 (Signed)
12 A. Whitmore"

13 A. Which year is that?

14 Q. Nineteen sixty-eight.

15 A. Yes.

16 EXHIBIT NO. 38: Letter to Personnel Department from
17 A. Whitmore dated April 9th, 1968.

18 Q. And the memo about your '68 holidays,
19 May 16th, 1968, referring to the fact that you went to
20 a Graduation Ceremonies at St. Joseph's School of Nursing
21 on May 15th and you attended the Board for its appearance
22 before the Select Committee on May 16th and you are to
23 be credited again with three days holidays?

24 A. Yes.

25 Q. Is that correct, sir?

26 A. Yes. Yes, that is on the Board of
27 Governors, St. Joseph's Hospital and that is Hamilton.

28 EXHIBIT NO. 39: Letter to Mr. Dowding from
29 J. F. Cauley, dated May 16th, 1968.

30 Q. Again, sir, June 25th, 1968, memo
31 signed by Miss Whitmore, relative to your holiday and
32 speaking of your arrangements to go to Calgary and to
33 a Union -- International Union meeting there and again

6-6

1 credited with 11 days?

2 A. Yes.

3 EXHIBIT NO. 40: Letter to Mr. M. Dowding from A. Whitmo
4 dated June 25th, 1968.

5 Q. Again, June 27th, 1968, under your
6 signature:

7 "I will be attending the Provincial
8 Conference of Carpenters in London, on
9 July 29th and 30th. These two days are to
10 be credited to my holiday entitlement."

11 A. That's right.

12 EXHIBIT NO. 41: Letter to Mr. Dowding from Mr. Cauley,
13 dated June 27th, 1968.

14 Q. Sir, just finally two documents on
15 this, April 1st, 1966, a memo signed by you:

16 "It is my intention to take five days of
17 my back holiday period, if this will not
18 interfere in the schedules of my two fellow-
19 Commissioners. It is my intention to be
20 away April 11th to 15th.

21 (signed)
22 J. Cauley"

23 Do you recognize that, sir?

24 A. I have got it on my record and it is
25 accepted as being right.

26 EXHIBIT NO. 42: Letter to Mr. Lane from Mr. Cauley,
27 dated April 1, 1966.

28 Q. And finally, your '65 holiday:

29 "It is my intention to take holidays from
30 8:45 a.m., Tuesday, December 28th to 12:00
noon, December 31st. These three and a-half
days should be taken from my back holidays.

(signed)
J. Cauley"

1 A. This is when I came back after.

2 Q. Do you recognize that, sir?

3 A. Yes, it is down here.

4 EXHIBIT NO. 43: Letter to Mr. J. Hollingworth from
Mr. Cauley, dated December 13th, 1965.

5 Q. In connection with those, I suggested
6 before we start that you kept scrupulous track of those
7 holidays. Will you tell me, sir, in 1969 before you took
8 your holiday, that there was to be a holiday in April,
9 did you give any notice to the Board when you left?

10 A. In '69?

11 Q. Yes.

12 A. I don't recall. Let's see, '69.

13 Q. Have you any record of those?

14 A. The holiday period would begin in
15 1968 up to May 1969 so I had known there had not been
16 any holidays decided upon. Because of the commotion, I
17 wasn't too certain that I was going to be even with the
18 Board in the summer of 1969 which is why I wanted
19 Mr. Canary to set up a corporate structure for me to go
20 into industrial relations, a field which I am now in.

21 Q. Sir, I can go back to the transcript
22 again if required and I can recall in two places where
23 you decided to just take a week's holidays in April of
24 1969.

25 A. Yes, but that's not the full holidays.
26 No, this is correct.

27 Q. Just a moment. In two places where
28 you said you intended on taking a week's holidays in 1969,
29 and I am simply asking you, did you conduct yourself as
30

6-8

1 | you earlier had done by giving advance notice and keeping
2 | scrupulous track or did you give any notice whatever to
3 | the Board that you were leaving?

4 | A. In April? I am sure I must because
5 | I took date of the memo to Miss Whitmore, that would have
6 | gone to the Board and to the Personnel Department.

7 | Q. That memo was dated May 12th, wasn't
8 | it?

9 | A. May?

10 | Q. The one of your illness was.

11 | A. In '69?

12 | Q. Yes.

13 | A. I don't think so, sir.

14 | Oh yes, it is dated May 12th, that's right,
15 | yes.

16 | Q. I am asking you, consistent with your
17 | earlier consistent practise of giving advance notice and
18 | keeping scrupulous track of your holidays, did you give
19 | any notice whatever in 1969 before you left?

20 | I want to know in what frame the Minister
21 | spoke to you. I want to know what the background was at
22 | that time.

23 | A. Well, I expected maybe in questioning
24 | the background may be covered but I was ready really to
25 | give up. I wasn't having any part of an atmosphere that
26 | to me was -- well, maybe I will say it later on, but an
27 | atmosphere that wasn't conducive to my way of conducting
28 | business. So after being pressured and pressured by my
29 | wife, coming home late at night, "Why don't you get out
30 | of that place and go back on the railway," and this is

6-9

1 | where I was giving consideration. I went in for my
2 | annual medical and then subsequent events which I related
3 | earlier today took place.

4 | Q. Do you have any recollections, sir,
5 | of advising the Board in advance that you were leaving
6 | April 5th or 17th of '69 as you eventually did?

7 | A. I am not sure, no, I couldn't say
8 | yes or no.

9 | Q. Just one other matter and it's
10 | totally unrelated but I want to touch on it, sir. In
11 | your evidence in the last day, you spoke of some 200 days
12 | the Board was owing Dr. Steele for his long illness. I
13 | think the way the evidence was it came out in this manner:
14 | that Dr. Steele owed the Board some 200 or more days in
15 | holidays and sick credits. Do you recall that?

16 | A. Yes, and I recall the circumstances.
17 | Because two or three times Dr. Steele had said to me,
18 | "I am not going to put up with this any longer. Life
19 | is too short; this is the end of Workmen's Compensation."
20 | So he decided for some reason to leave. He told me he
21 | was coming back or maybe I would have gone in '68 too.
22 | He said, "I will be back after my trip to Thailand." So
23 | when he came back he said, "I am finished." I said,
24 | "How come?" He said, "You know, I am a way at thenote
25 | on my holidays and sick credits." He said, "Gee, I must
26 | owe them a couple of hundred," but he said "I'll be on
27 | pay until next August so I am going up to Dorset and put
28 | out a shingle 'Part Time Medicine'."

29 | Q. I am going to produce to you, sir,
30 | a reference of attendance for Dr. Steele.

A. I have no idea.

1 EXHIBIT NO. 44: Letter indicating the attendance of
2 vacation credits of Dr. E.C. Steele
3 received from the Workmen's Compensat-
4 ion Board.

5 Q. Probably you can look at it before you
6 tell me, sir. The record will show if it's later identi-
7 fied in January 8th of 1968 -- was that Dr. Steele's re-
8 tirement, first week in January of 1969?

9 A. I didn't know he had retired. I
10 thought he was just going on a leave of absence to go to
11 Thailand but it would be in January.

12 Q. In any event, it shows a credit
13 balance to him of 136½ days, then a debit balance of 200 days?

14 A. I would accept that. I am just going
15 by what he said to me but it was, I'm pretty wure, at the
16 time Dr. Steele told me this.

17 Q. Would you accept that as being the
18 Board's records?

19 A. I am not trying to question it be-
20 cause I have no actual knowledge of his credits.

21 Q. You see, it is sometimes misleading
22 Mr. Cauley, to make statements that don't originate with
23 firsthand knowledge.

24 A. I think I said that. I think I made
25 that clear that Dr. Steele told me that this is what ---

26 Q. There is another matter, sir, that
27 was reported in the Globe and Mail newspaper and it was
28 the item that referred to your \$62,000. for staying at
29 home. In that story the quotation is made as follows:

30 "Mr. Cauley said the Board conferred with
 the Labour Minister only once in five years
 and that was with Mr. Rowntree. The only

6-11

1 time the Board ever met Mr. Bales was when
2 Mr. Bales was sworn in as Minister.
3 Business was not discussed at the party."

4 Is that correct, sir?

5 A. No. I am not sure what is in there
6 but I think what I said last week was in 1967 we had,
7 I believe -- my other records are at home -- I believe
8 we had six meetings with the Minister as a corporate body.
9 I was talking as a corporate body as the legislature
10 created this organization. And we met -- if it was six,
11 we met five of the six times concerning the fire and one
12 other when he said, "Now, get this place going. There is
13 too much discontent over there," or words to that effect.
14 In 1968 we had no meetings with Mr. Bales as a corporate
15 body because my records don't show a meeting whatsoever.

16 Q. In any event, is the newspaper story
17 right in that regard?

18 A. I couldn't say. We had no meetings --
19 we had the last meeting as a corporate body with
20 Mr. Rowntree. The meeting with Mr. Bales was more as a
21 corporate unit, more of a social -- not on an outside
22 social -- we met in the office of York Street and just
23 talked about a few things. Then we came back to the
24 meetings with him concerning the fire at Downsview. There
25 is one meeting in which he said and which I followed up
26 in documents I tabled at the last meeting to, in other
27 words, get the show on the road. In 1968 we had none.

28 Q. The question I was asking, is the
29 newspaper right in that respect or not?

30 A. Not in that one respect.

6-12

1 Q. That is the question I was asking
2 you.

3 Just one other matter, sir, if I could
4 here. I am going to produce what appears to be a letter of
5 March 15, 1972 of your vacation and sick leave credits
6 for Mr. J. F. Cauley to the Board and it shows that in
7 1969, you used 18 days to the first of May, 1969. Would
8 you take a look at that?

9 EXHIBIT NO. 45: Letter of Earned Vacation and Sick Leave
10 Credits for Mr. J. F. Cauley received
11 from Workmen's Compensation Board.
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1 A. Yes.

2 Q. Are you able to agree with that,
3 sir? Do you recognize it as being the Board's record?

4 A. I don't know whether it is from
5 the Board's records or not. Certainly the credits -- I
6 learned later the credits were being built up during
7 this period.

8 Q. I understand that. The point I
9 made is you used credits to the 1st of May, is that
10 correct, if you read it properly?

11 A. I would think so.

12 Q. I am not asking you about the facts.
13 I am simply saying, do I interpret that document properly
14 when I put that to the Committee?

15 A. I would, but I wouldn't say this
16 means I used up 18 days in April because I remember going
17 back when the doctor -- you know, when my son had to
18 take some heavy penicillin and there was no use hanging
19 around. But the 7th to the end of April would make it
20 18 days or whatever it was.

21 Q. If that's true it's not consistent
22 with your statement you stayed until the 17th of April,
23 is it?

24 A. Fifteenth, 15th of April. If this
25 is true it wouldn't, no.

26 Q. Let's look at it the other way.
27 The document I have filed showing the photostats of the
28 calendar sheet from the daily records which are said
29 to be kept by the Board, by Mr. Harvey subject to later
30 identification, shows that Easter Sunday was the 6th of

1 April?

2 A. Yes, I remember that.

3 Q. That would make Easter Monday the
4 7th of April; do you agree with that?

5 A. This is when I intended to be away.

6 Q. Just listen to me, sir. Easter
7 Monday would be the 7th of April?

8 A. Yes.

9 Q. The following Monday would be the
10 14th and the following Monday the 21st; do you agree
11 with that?

12 A. I will accept it. I am not disagreeing
13 with this point.

14 Q. Just to be clear with you, if five
15 days are taken during the week of April 7th, five days
16 during the week of April 14th, five days during the
17 week of April 21st, that would be 15 days; wouldn't it?

18 A. Well I don't think they worked it
19 that way. It was always my understanding that you take
20 the week, you know, the full week.

21 Q. In any event, the arithmetic is
22 right; isn't it? Would you agree?

23 A. I would agree with that.

24 Q. If Monday the 28th -- if the 28th
25 was Monday and the 29th was Tuesday and the 30th was
26 Wednesday; do you agree with that?

27 A. I would accept that.

28 Q. That would be three weeks of five
29 days and one week with three days up to the 1st of May,
30 wouldn't it?

1 A. That could very well be, yes.

2 Q. That would be 18 days from the 5th
3 of April up to the end of the first of May, wouldn't it?

4 A. I would accept that.

5 Q. Would you agree that is consistent
6 with the Board's other record that shows that you were
7 not there from the 7th to the 14th?

8 A. It may be consistent with the
9 Board's records but it isn't consistent with my record,
10 this is what I am saying -- but I will accept it.

11 Q. What week are you referring to?

12 A. The record that I keep of my absence
13 and where I was.

14 Q. Is that record before the Committee
15 now?

16 A. No, it isn't.

17 Q. Is it available for the Committee?

18 A. Well, it ---

19 This is my original if I may -- do you
20 want me to read it to the Committee?

21 Q. If it is something touching on the
22 question I am asking, whether you attended the Board
23 during that interval or not, I wish you would.

24 A. I will say it doesn't agree with my
25 record and I will accept the Board record that I wasn't
26 there that week.

27 Q. You do accept the Board's record?

28 A. For that week only. I am not talking
29 about others, but as I say, it doesn't coincide with my
30 records, and it doesn't coincide with what I have here and

7/4

1 filed, but if the Board's records show I was away that
2 week, I will accept it.

3 Q. The point of the matter is simply
4 this: if it accepted or if it is proven to be so that
5 it would appear at this stage and subject to what later
6 may be shown that you were absent from the Board from
7 the 7th of April to the 5th of May, and you saw the
8 Minister without any advance notice to the Board and the
9 only notice that did come to the Board was on the 12th
10 of May which is some weeks later from your secretary.,
11 it is only on that question of you challenging the
12 Minister's statement that you were absent that I am
13 bringing this before the Committee.

14 A. Well, I will accept -- I wasn't
15 If
16 absent on and off as Hansard said./ I was absent on the
17 7th I was absent consistently from the 7th to the 28th.

18 Q. One other thing you said this
19 morning, sir, in connection with Dr. McHarg's letter ---

20 A. Yes?

21 Q. He referred -- the letter you filed
22 this morning -- the condition of high blood pressure in
23 April of 1969 or elevated pressure I think he said, and
24 you said, "I think I referred to that at the last meeting,"
25 or something. Do you recall that?

26 A. Yes.

27 Q. Your reference at the last meeting
28 was to a time subsequent to your interview with Mr.
29 Bales, wasn't it, after the 5th of May?

30 A. No, not after the 5th of May. I
31 didn't mean it that way because -- I went back after the

7/5

1 5th of May for a medical report which I couldn't obtain.

2 Q. Just a moment. It is in that
3 context, sir, that you said that you ran two and a half
4 miles to a shopping plaza and all you could do was get
5 a little elevated blood pressure?

6 A. This is what I was referring to
7 earlier, not subsequent to May the 5th I am sure.

8 Q. Pardon?

9 A. Because of that I would get a
10 medical certificate and I would be certifiably ill.

11 Q. Right, and get more than your six
12 months. But that's not the point. When was that run
13 down to the shopping plaza? Was it before or after you
14 spoke to Mr. Bales?

15 A. Oh, it was before. It was before I
16 spoke to Mr. Bales on the 5th of May. Now I spoke to
17 him twice.

18 Q. Just a moment. Was it before or
19 after the 5th of May that you ran to the shopping plaza?

20 A. Before the 5th of May.

21 Q. Was that for the purpose of seeing
22 if you could get a certificate to make you certifiably
23 ill and thereby making you eligible for more than your
24 six months accumulated sick leave?

25 A. Well I wasn't thinking about six
26 months or more than six months. He asked me if I could
27 get a medical certificate for him that my health wasn't
28 sufficient to carry on.

29 Q. I don't want you to wind up confused
30 when we are finished with this. Mr. Bales spoke to you on

7/6

1 the 5th of May?

2 A. The first time, yes.

3 Q. And you say that he asked you if

4 you could get a certificate?

5 A. Let's see now ---

6 Q. You have already told me that this

7 run to the shopping plaza ---

8 A. It might be ---

9 Q. Just a moment. It was prior to the

10 5th of May?

11 A. It must have been right after

12 because I went to Dr. Walsh for my annual -- this is what

13 I filed today ---

14 No, I still think it was before. I still

15 think it was before the 5th.

16 Q. Did you intend to have the Committee

17 then think that prior to your conversation with Mr. Bales

18 that you were acting in furtherance of permitting yourself

19 to retire?

20 A. No. What I was trying to do was

21 as he had -- I mean it was obvious that things weren't

22 going, so I went for my annual ---

23 Q. No ---

24 A. Just a minute. I went for my annual

25 medical on the day -- it was the day or day after Mr.

26 MacDonald came to see me and he said -- no, he said it

27 in the office, it would be in April in the office, it

28 was to this effect: "You know, with all your sick

29 credits and everything, you know, why don't you just

30 take advantage of it and quit worrying."

1 Q. So the point that I ---

2 A. This would be right around this
3 time in April, not when I was in the office.

4 Q. The point I want to direct your
5 mind back to is whether or not the run to the shopping
6 plaza that you referred to I think on April 5th was before
7 or after you spoke to Mr. Bales on the 5th of May?

8 A. It must have been right after I guess
9 if that was the date that he asked me for the medical
10 certificate, and I told him I couldn't get it.

11 Q. If it was right after then it is
12 certainly not the elevation in blood pressure that Dr.
13 McHarg referred to in the letter you filed today?

14 A. No, this was another incident when
15 I went down to the General Hospital for my annual report
16 and it presented for a pretty rough reading but this was ---

17 Q. I am just going back where you said
18 this morning when you made the aside comment that "I think
19 I referred to this elevated blood pressure, this incident
20 at the last hearing."

21 A. This one is in April and then I went
22 back after, it would be after the 5th of May I presume now
23 and said, as I recall, "Take a couple of weeks off because
24 you don't need any more medical treatment or medical
25 assessment," or therapy or whatever it is.

26 Q. The letter you filed from Dr.
27 McHarg this morning refers to (a) elevated blood pressure,
28 and it also refers and you read it and I noted that a
29 few weeks rest might do?

30 A. Yes.

1 Q. And just going back again to this
2 challenge that you issued to the Hansard statement about
3 whether or not you had some medical problem or not at
4 the time?

5 A. There was no medical problem.

6 Q. There was not a medical problem?

7 A. There was no medical problem.

8 Q. The fact your doctor thought you
9 should have a few weeks rest?

10 A. No. He didn't know that I went out
11 for a little run.

12 Q. Well now, just a moment. That's
13 not the same incident. I thought we had cleared that up.

14 A. This is after. But at this time he
15 said, "Just take a few weeks. There is no necessity for ---"

16 Q. He said what?

17 A. He said, "I think you should take a
18 few weeks off."

19 Q. Take a few weeks off because of your
20 health you mean?

21 A. I don't even think he mentioned that.

22 Q. What did he mean?

23 A. I don't know.

24 Q. I don't want to shut you off, sir,
25 please.

26 A. As I say, he says, "Why don't you
27 take a few weeks holidays," or something, words to this
28 effect as I recall it.

29 Q. I am going to produce to you what
30 purports to be an inter-departmental communication from

79 1 the Board dated April 15th, 1969 signed by A. Powell,
2 director of medical services. You would know him, sir,
3 would you?

4 A. Yes.

5 Q. Would you recognize his signature?

6 A. No.

7 Q. To this effect:

8 "Subject: Mr. J. F. Cauley"

9 This again would be almost three weeks before you saw
10 the Minister, would it, April 15th, 1969?

11 A. Well, if that's the date it would
12 be, but I don't know anything about it.

13 Q. "On April 11th, 1969 I received a
14 telephone call from Dr. R. G. McHarg, a
15 general practitioner in Ancaster, Ontario and
16 on the medical staff of St. Joseph's
17 Hospital, Hamilton.

18 Dr. McHarg said that he was a family
19 physician and had been consulted by Mr. J.
20 F. Cauley who was presently on a week's hol-
21 idays. He stated that on his physical
22 examination there was an increase in blood
23 pressure and he considered it wise to
24 refer Mr. Cauley back to the cardiac
25 consultant who looked after him after his
26 attack of cardiac infraction several years
27 ago. He expressed the opinion that Mr.
28 Cauley would be away from work for at least
29 two weeks.

30 I enquired if there were any other factors

1 to indicate stress, contributed to the
2 increase in blood pressure, but Dr. McHarg
3 was not aware of any extraneous factors.
4 At least it was not apparent that he was
5 divulging any information given in
6 confidence.

7 I will telephone Dr. McHarg later to
8 determine Mr. Cauley's progress.

9 A. B. Powell"

10 Can you identify that, sir?

11 A. I don't know anything about it.

12 ---EXHIBIT NO. 46: Letter to Mr. A. G. MacDonald from
13 Dr. A. B. Powell dated April
14 15, 1969.

14 THE WITNESS: I couldn't identify it.

15 I don't know his signature, and I don't know anything
16 about this. I couldn't identify it.

17 MR. DONNELLY: Q. Do you agree with the
18 content of the document, if you can't identify it,
19 physically as a piece of paper?

20 A. Well, in essence in the laymen's
21 language he said, "there is really nothing wrong with you."
22 "What excited you?" words to this effect. "Why don't
23 you take a couple of weeks holidays and you will be fine."

24 MR. DONNELLY: Mr. Chairman, I am not
25 quite sure how you break up here, but any time it is
26 convenient. Are you prepared to go on?

27 THE CHAIRMAN: We will adjourn now and
28 we will resume again at 3:00.

29 MR. LEWIS: Mr. Chairman, two brief
30 questions: how quickly will the Hansard record be

1 available to this Committee?

2 THE CHAIRMAN: I am told tomorrow morning,
3 Mr. Lewis.

4 MR. LEWIS: Tomorrow morning? Will there
5 not be an instant Hansard available before that?

6 THE CHAIRMAN: There will be parts as it
7 is coming through.

8 MR. LEWIS: You will notify us.

9 Secondly, Mr. Chairman, is it possible for
10 members -- I presume it's possible for members of the
11 Legislature who are not members of the Committee to see
12 some of the information which has been filed, some of
13 the documents.

14 Can that be done in orderly fashion?
15 Will they all be collected in some safe place I presume
16 for safekeeping over a break period?

17 THE CHAIRMAN: The Clerk advises that he
18 will be photostating as many as he can during the noon
19 break and making them available to Committee members.

20 MR. LEWIS: Thank you, Mr. Chairman.

21 THE CHAIRMAN: Who in turn can make them
22 available.

23 --- Upon adjourning at 12:00 noon
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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

(WORKMEN'S COMPENSATION BOARD HEARING)

Tuesday, April 18, 1972

Afternoon sitting

8/1

1 --- Upon commencing at 3:00 p.m.

2 JOHN F. CAULEY, Resumed:

3 THE CHAIRMAN: Gentlemen, we will call our
4 meeting to order and we would ask counsel to proceed where
5 he left off at noon hour.

6 MR. DONNELLY: Q. Mr. Cauley, at the
7 noon hour I was dealing with the memorandum signed by
8 Dr. Powell dealing with Dr. McHarg's report on April the
9 11th. At that time it seems that because of a condition
10 of high blood pressure that it was recommended that you
11 should have some time off, perhaps two weeks or something;
12 is that the situation?

13 A. I think that is the situation, yes.

14 Q. Before I go on -- I didn't want to
15 deprive you of any chance to speak on that just because of
16 the recess. Was there anything further you wanted to
17 bring out there?

18 A. In respect to the doctor's bills?

19 Q. And the medical report prior to your
20 meeting with the Minister?

21 A. Not at this time, thank you.

22 Q. This is probably as good a time as
23 any, sir, with respect.

24 A. Well that is the first time I had
25 seen it and there is really no comment I could make on it
26 on that particular point.

27 Q. On your own Exhibit it rather indicated
28 the same thing followed this morning so I take it it is
29 no surprise then on the information if it was in the
30 Exhibit that you had?

1 A. No.

2 Q. Sir, I wanted to speak if I could
3 on an entirely different matter and I want to speak if
4 I could about the year 1965 in the Compensation Board
5 and that was the year I think that Mr. Legge arrived at
6 the Board as Chairman in March or April of that year?

7 A. Some time early in the year.

8 Q. And in the initial stage I think
9 it is recorded in the transcript where you said he had
10 been in Europe or something at that time?

11 A. This was my understanding.

12 Q. And that came to be a source of
13 irritation to you later, absences from the Board by the
14 Chairman; did it, sir?

15 A. No, not being in Europe at that
16 time because I understood from the Minister of the day
17 that he had been there on the 1st of the year and then
18 later learned that he was away with the permission of
19 the Minister, this is as I understood it and so that
20 didn't create any irritation.

21 Q. At that time you had been the vice-
22 chairman of the Board for some years you said?

23 A. Yes.

24 Q. I understand today and even then you
25 were an acknowledged authority on compensation; I think
26 it is part of your presentation during the 5th of April,
27 you made that clear to the Committee?

28 A. I became involved in my first case
29 of the Workmens' Compensation in 1927 and I can't tell you
30 the exact date, but I know the Chief Justice Sloan, I think

1 I filed that as an Exhibit, Chief Justice Sloan or the
2 late Justice Sloan of B.C. who was involved in '50 to '52,
3 I believe, around in there in a pretty extensive inquiry
4 in British Columbia came down and thought enough of me
5 to spend four days with me and honour me with an auto-
6 graphed copy of his first report off the press.

7 Q. I'm really not interested in that.
8 I'm saying under the circumstances of Mr. Legge's appoint-
9 ment you were considered to be an authority and you had
10 been vice-chairman for many years?

11 A. If you are leading up to that I
12 wanted to be chairman, no.

13 Q. I'm not leading up to anything. I
14 just want to deal in the year and that was also the year
15 you had your heart attack and returned to work on the
16 12th of October; is that right?

17 A. Around there.

18 Q. I think one of the memos we filed
19 this morning indicated that, memo dated October 8, 1965:

20 A. Yes.

21 Q. When you did get back you found
22 things to be completely foreign; is that correct, sir?

23 A. I only found one part to be
24 completely foreign and that was what I termed a semi-
25 advisory appeal system. You don't change the system at
26 the top end, you change it at the claims end.

27 Q. That was a continuing source of
28 problem, that particular change in the system that
29 originated?

30 A. Yes, because I didn't agree with t

1 and I don't agree with it now.

2 Q. On page 26 of the last case, evidence,
3 sir, it just briefly says this, speaking of Mr. Legge
4 coming in, "I am not sure, it could have been March,
5 April, whatever it was
6 in 1965 when I came back from my
7 coronary I heard about all these
8 things going on that were completely
9 foreign to the Workmens' Compensation
10 Board."

11 That rather indicated there was more than just the one
12 thing you found foreign; is that correct?

13 A. Well, yes. I mean the appeals and
14 procedure from which Mr. Justice McRuer, of course,
15 supports the position I have taken and we suddenly -- or
16 I shouldn't say suddenly, that may not be the word, but
17 it seemed to me that we were getting an awful increase
18 in staff which I felt wasn't necessary.

19 Q. On that point, sir, I think in the
20 preliminary to your address in the last day you also
21 filed certain memos that you had dictated in the course
22 of your years at the Board indicating your interest and
23 concern in certain specific areas.

24 A. Well I think in addition, sir, to
25 that it was -- it was my interpretation at least of
26 carrying out a directive from the Minister of Labour.

27 Q. One of those memos I noticed you
28 filed was dated December 7th of 1965 filed the last day.

29 Did that sound right to you, sir?

30 A. Would that be the one with the
signature on the back, Mr. S.R. Johnston's signature on

1 the back?

2 Q. I think that is the one, Mr.
3 Johnston's and perhaps it might be wise to hold it.

4 A. "Wait a few years," which I did, yes

5 Q. But I think that memo is dated just
6 the day following the Whitmore affidavit -- or the
7 Bancroft affidavit in December 6th, 1965. Would you know
8 about that, sir?

9 A. No. I have already stated I didn't
10 realize for some time that they were affidavits; I though
11 that they were ---

12 Q. The incident in any event. It was
13 the day following the incident?

14 A. If it was it was purely coincidental

15 Q. There has been some suggestion at
16 the Committee here that apart from the detail of the
17 affidavits that it is rather unfortunate that such a
18 background should exist where such an incident could
19 occur.

20 A. To me it was ridiculous.

21 Q. And fiasco or whatever it was, it
22 did wind up costing you some money, did it, sir?

23 A. Yes, it did.

24 Q. So you had to pay something towards
25 this?

26 A. I paid the money going from memory
27 now, but it seems to me it was around \$400, a little one
28 way or the other.

29 Q. I am just dealing really with the
30 items of discord in 1965 and I notice, sir, in '65 and
after, but I notice that when reference was made in the

1 transcript on the last day to the McGillivray report in
2 brief you say that you signed it under protest, sir?

3 A. Yes.

4 Q. I suppose that is some evidence of
5 discord right there that it was done in protest?

6 A. Yes, I would think it was.

7 Q. Another thing you mentioned, sir,
8 on the same score that Mr. Bales expressed displeasure
9 about the way that things were going in the Board and he
10 said to get together and straighten things out. Do you
11 recall that?

12 A. Yes.

13 Q. Another thing that seems odd just
14 the very fact of it happening is the taping of the Mac-
15 Donald conversation that such a background existed where
16 that incident could have happened? Do you agree that that
17 in itself is an odd incident, sir?

18 A. This is in '69. No, I keep a tape
19 recorder by my bed most of the time with a remote control
20 button because sometimes I think of something through the
21 night and I put it on.

22 Q. We have all that I guess, yes.

23 A. And I think in all these manuscripts,
24 and I can tell you there are a number of them, but it was
25 just there; it wasn't hidden. It is where it always
26 was except at night, it is behind the chesterfield right
27 next to the chair that I sit in.

28 Q. It struck me as odd that that might
29 happen. You don't think so?

30 A. No.

1 Q. In 1969 you made some reference to
2 your wife being after you ever since Mr. Steele left?

3 A. Dr. Steele.

4 Q. Dr. Steele. She had been at you
5 since January 1968 to stop fighting a hopeless fight or
6 something of that nature?

7 A. Yes, something like that. She was
8 unhappy that I was being employed at the Board for a num-
9 ber of years and she was unhappy that I was so unhappy
10 about the way things were going and the lack of morale.

11 Q. Following that I think just to repea
12 what you said this morning, you indicated in your letter
13 to Mr. Humphrey that you were really considering in-
14 corporating a private company and going into business for
15 yourself?

16 A. In industrial relations, yes.

17 Q. And if you did that you wouldn't hav
18 been able to continue as vice-chairman I take it?

19 A. No.

20 Q. And another matter, sir, that came
21 up this morning just touched on was when you did leave
22 the Board either April the 7th or whatever date it was,
23 14th of April of 1969, whatever date it was, that when y
24 did leave you told the Committee the other day that you
25 had planned taking a weeks holidays only?

26 A. I think this is correct.

27 Q. Do you recall saying that?

28 A. I think I said a week or a few days
29 I may have said, but a short period.

30 Q. There was no suggestion at that tim

1 that you were taking it as sick leave or anything. The
2 evidence you gave to the Committee was that it was to be
3 as holidays; is that so?

4 A. Well, I wanted to think the thing
5 over. I mean there was so much unhappiness and there
6 was so much involvement that I wanted to sit down quietly
7 and think the thing over whether to walk out or whether
8 to stay and try to straighten things out.

9 Q. And another course of discord seemed
10 to be whether it was real or imagined you thought a Mr.
11 Hamilton was after your job with the Board, sir? You
12 touched on that?

13 A. Oh, yes, I was quite convinced of
14 it in my own mind.

15 Q. Tell me, sir, were you regularly
16 attending the non-claims meetings?

17 A. I don't want to be bantying words
18 around, but when I said when Mr. Bales was talking about,
19 at least as I understood it and I am sure I understood
20 it correctly, talking about claims appeals hearings that
21 had to be held up and delayed and cancelled because of
22 my poor attendance, I don't think he used the words
23 "poor attendance" because of my ---

24 Q. I think you covered that the other
25 day, sir. I don't want to interrupt or stop you from
26 giving new evidence.

27 A. There is a difference between the
28 two Hearings. I didn't want someone to come in here and
29 say there were 300 hearings which would have included
30 maybe a few agenda items or something else like that, but

1 I didn't miss very many of them because I would be home
2 Friday night maybe 6:00, 7:00 or 8:00 o'clock.

3 Q. Tell me, sir, was one of the reasons
4 of your discontent your own ambivalence if you can call
5 it that, was it diminished by this change?

6 A. None whatsoever. I am too allergic
7 to those other things from the barnyard; that I am not
8 an egotist.

9 Q. I wasn't really referring to the
10 barnyard, sir, I was going to refer to the McGillivray
11 Royal Commission Report. I am sure you are familiar
12 with that, are you?

13 A. Oh, yes, very familiar with it.

14 Q. And at page 60, sir, just at the
15 bottom, brief passage, I wonder if I could read it:

16 "In the early days of his tenure of
17 office, the Vice-Chairman was able to
18 deal by telephone and correspondence
19 with enquiries from labour represent
20 atives about particular cases, to
21 examine the files and to give speedy
22 reports on any problems that may hav
23 been in the way of a prompt decision
24 As the volume of cases increased
25 the Vice-Chairman was supplied with
26 one or more special assistants (ever
27 tually four in number by 1965) who
28 assisted him in dealing with these
29 personal enquiries. By means of th
30 informal approach, union representa

1 were often able to obtain information
2 which they could pass on to the work-
3 man in order to explain and justify
4 the refusal of his claim or, where
5 there was a delay in adjudication,
6 to discover what report or evidence
7 was needed before a decision could be
8 made. A high level of harmony and co-
9 operation developed between the Board
10 and organized labour because of this
11 method of direct access and informal
12 communication and the Board is, of
13 course, most anxious to retain and
14 encourage this helpful relationship.
15 With the advent of a claims volume
16 of the order of 300,000 to 350,000
17 per year, however, the work of the
18 Board and its members grew tremen-
19 dously and, in its judgment, it be-
20 came impossible to continue to operate
21 with the complete informality and
22 direct communication with claimants
23 that the unions had become accustomed
24 to. The Board realized, furthermore,
25 that in view of its quasi-judicial
26 function it was undesirable that a
27 Board member should discuss a part-
28 icular case that might later come
29 before the Board for review on appeal."

30 Now, are you familiar with that passage,

1 | sir?

2 | A. Yes.

3 | Q. It seems that until the time of the
4 | change of the procedure that you were a direct liaison
5 | between claimants through their unions and the Board
6 | itself; would that be a fair statement?

7 | A. Well I was one of them but I don't
8 | agree with the findings of the learned Judge in those
9 | passages because he didn't speak to me.

10 | Q. From the Report it would seem as a
11 | result of the change you no longer occupied that same
12 | position?

13 | A. Let me say this to the Committee
14 | through you, Mr. Donnelly: That in my 26 years prior to
15 | that there was only one case that was ever discussed with
16 | me by a person who eventually came before the Board and
17 | I disqualified myself and I never gave out an opinion.
18 | I gave to people who asked it because this is the intent
19 | of the Act, I gave out to people who asked where the
20 | claim had fallen. They only fall in one of two categories
21 | medical or non-medical, and that if I may, just for the
22 | benefit of the Committee, in the 1950-52 Royal Commission
23 | Inquiry of the Honourable Mr. W.D. Roach there was one
24 | brief that had a portion that expressed some criticism
25 | the way they said they were operating at least my depart
26 | ment and the young judge immediately telephoned me and told
27 | me not to appear before his commission which was the understand-
28 | ing, that no Board members would appear, and he came
29 | over to the office at the time he indicated and he said,
30 | "I want you to get a telephone call from a union or a

1 letter"-- I didn't confine my work to unions, to any work-
2 men, and I went through the whole thing step by step
3 over a period of pretty close to two hours.
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1 And if you would care to -- and the Comm
2 has it, I am sure -- find the report of the Honourable
3 Mr. Justice Roach, he recommended no change whatsoever.
4 Now the Honourable Mr. McGillivray didn't see fit to ca
5 me or to inquire of me when he -- whatever information
6 he went over -- to compile those three pages, 60 to 62
7 inclusive.

8 Q. The McGillivray report makes some
9 reference to a substantial increase in claims; was that
10 the case, sir?

11 A. No. The real industrial expansion
12 and expansion in claims in Ontario came between the year
13 1946 through up into 1950. We had two things; we had th
14 boys coming back from overseas who were into an entirely
15 new system. The system was changed around about 1945 --

16 Q. Excuse me.

17 A. If I can please finish.

18 Q. I don't want to interrupt you in an
19 way.

20 A. I want to tell, if the Committee w
21 bear with me, I want to tell how the increase was. So
22 that we had not only an increase in volume because of th
23 increase of industrial activity plus the elimination of
24 all the numbered limit exclusions covered by the Act, p
25 almost a complete new staff to train and so that if it
26 didn't involve any problems the system was set up -- th
27 I set up was set up to handle a half a million claims p
28 year, new claims. We are not at that yet. Now let me
29 say this to the Committee and to counsel, if I may,
30 Mr. Chairman, that from the beginning of time under Wor

1 Compensation until the recent amendment putting down the
2 one day waiting period, about two-thirds of the claims
3 reported were medical aid only, of one sheet of paper,
4 one visit. The other third, and this will average out
5 right over the 50 odd years, the other third involved
6 cases where the payment of compensation was the issue.
7 And out of those one-third, there were less than 3% from
8 1950 right up to where we involved what we call the problem
9 so we really weren't talking any great interest in volume,
10 no.

11 Q. All right, sir, thank you very much.

12 Could I get back again, sir, and I want to
13 deal if I could with the transcript from the last day on
14 page 67. There is a very brief excerpt from you that says
15 -- it is again dealing with mid-April in 1969.

16 "Let's go back to the first time in the
17 year 1969 was Monday, April 15th and the
18 following Friday because of things I already
19 discussed. Well, this is it, and on the next
20 day -- I think it was dealt ^{with} by the next day

21 I went to Tom Eberly's house...." and so
22 on, and what do you mean by the use of the expression,
23 "This is it," sir?

24 A. I pretty well -- I made up my mind
25 and I thought, well, maybe my wife was right, you shouldn't
26 be banging your head up against the wall, maybe you should
27 go into industrial relations where I had a lot inquiries
28 or go back railroading.

29 Q. Sir, I was dealing earlier with some
30 discord or something in the Board and then it comes to

9-3

1 culmination and this is it or something. Are we in
2 agreement?

3 A. It may be in the way I expressed
4 myself. I am Irish and sometimes I throw the horse over
5 the fence.

6 Q. I am too but I don't talk about it
7 very much, sir.

8 A. I always let everybody know.

9 Q. But the point, to get back on the
10 path again, after these problems over the years, it came
11 to culmination in the middle of April and you said this
12 was it and you went to see Eberly and eventually went to
13 see the Minister?

14 A. Well, the reason I went to Mr. Eberly
15 home, sir, on the Sunday, was that I had been trying for
16 almost two years to get the Minister to have a meeting of
17 the full Board as such. Now the Minister, anytime I called
18 him, which wasn't very often, he saw me, but only as an
19 individual and I understand from a later press release
20 that I read within the past week or two that this is the
21 situation to this day. Now I went to Mr. Eberly
22 as the Deputy and I said, "Now I think it is imperative
23 that the Minister should meet with us; if we are going to
24 get any harmony or efficiency in this operation that we
25 should all be together." Because if I am going to say
26 anything about any person I want them in front of me. I
27 don't talk behind peoples' backs.

28 Q. Sir, there is an Exhibit here entered
29 by you, I think, on the first day that dealt -- it was
30 May 12th of 1969 and it dealt with your absence from the

9-4 1 Board and it bore Miss Whitmore's initials "A.W." and
2 it simply said "Mr. Cauley has been absent due to illness
3 from April 7th (which was struck out and amended to the
4 15th) to date."

5 A. I will accept April 7th.

6 Q. Do you recall the document I am
7 referring to you, sir?

8 A. Yes, that is what you were showing
9 to me this morning.

10 Q. On the 12th of May. Was that done
11 on your instruction or with your knowledge, do you
12 remember, sir?

13 A. I think it was. I think the afternoon
14 around noontime, as I recall it, I think when I left the
15 Minister's office -- I am not sure. I could have called her
16 and said instead of holidays show me sick or whatever it was.
17 I am not sure.

18 Q. In any event, was it true or otherwise,
19 the content of the memo's?

20 A. I agree. If it is the 7th then it
21 was the 7th. When I read the statement into the record
22 the other day it showed the 15th and that's why I said
23 the 15th.

24 Q. I really don't want to dwell on that
25 point. I meant rather the reference to the cause of your
26 absence. I was asking if that was true. "Mr. Cauley
27 has been absent due to illness".

28 A. I think I may have said that because
29 the doctor said you can take two -- whatever it was, it
30 is in there, two or three weeks. So I think I did most

9-5

1 likely say, "Mark me sick instead of on holidays," or
2 "Mark me in the Personnel Department".

3 Q. You would say that as a matter of
4 truth, would you, or simply as convenience?

5 A. Well, I would say it -- I didn't
6 feel ill but I would say it as a matter of the doctor
7 saying, you know, take two or three weeks.

8 Q. I don't want to press you unduly,
9 sir, but I simply want the Committee to know whether it
10 was true or not what was in the memo.

11 A. If I said illness -- I am ill this
12 morning but I am here -- I have got a real cold and a
13 temperature so that I am here. Now, I don't think I am
14 ill and I think was the same situation that applied at
15 that time. I was ill to the extent that I couldn't have
16 gone in but nevertheless I may not have felt that I was
17 perfect.

18 Q. May the Committee take it in that
19 qualified sense truthful?

20 A. Yes, with that qualification, as I
21 am here today.

22 Q. The only thing that puzzles me about
23 it, sir, was that for some reason it happens to bear the
24 identical date to your letter of resignation which also
25 was written on the 12th of May and that if the memo is
26 true, I just wondered if your letter of resignation written
27 the same day in referring to your health was also true?

28 A. Well I suppose to answer that, how
29 high is up? I would have to give the same qualified
30 answer to what I have given now. The Minister and I we

1 arranging an understanding. I don't like to use the word
2 deal -- but we were coming to an understanding.

3 Q. I think you went into that the last
4 day, even the use of that expression, "I don't like to
5 use the word 'deal'."

6 A. Yes.

7 Q. So in that qualified sense the letter
8 may take the resignation as being true?

9 A. With those qualifications.

10 MR. DEANS: May I ask a question, Mr. Chairman?

11 I seem to recall during the last day, I asked
12 you specifically, Mr. Cauley, whether or not the content of
13 the letter of resignation was accurate. My recollection of
14 your answer was that it was not.

15 THE WITNESS: Yes. Because I am not a
16 medical authority. I wrote the letter.

17 MR. DEANS: I recall you saying, if I am
18 not mistaken, that in fact you were not ill, that you wrote
19 it simply to meet the conditions set down by the Minister.

20 Is that what you said?

21 THE WITNESS: I wasn't ill enough that I
22 couldn't have been at work other than I am not ill enough
23 that I am here today but I composed the letter in its
24 entirety with the Minister's knowledge.

25 MR. DEANS: So that the two then were in
26 fact related?

27 THE WITNESS: Yes.

28 MR. DEANS: I am just trying to get an
29 answer. Was the one in order to substantiate the other?

30 THE WITNESS: I would think so because the

9-7

1 dates confuse me for the moment. What I was going to
2 start off to say was that I thought I had called
3 Miss Whitmore from the Minister's office and that I
4 wasn't sure of the dates and this is when we had agreed
5 to certain things and now if they are both the same date
6 then I did call Miss Whitmore from the Minister's office

7 MR. DONNELLY: Q. With respect, sir, on
8 Mr. Deans' point, perhaps we should point out one thing
9 to the Committee that they may think to be important and
10 that is when the testimony was given on the fifth of
11 April last that Mr. Deans referred to that before the
12 Committee there was neither the letter from Dr. McHarg
13 that you filed this morning, indicating a condition of
14 high blood pressure in April 1969, nor was there before
15 the Committee the memo of Dr. Powells, dated April 15th
16 indicating the report from Dr. McHarg on April 11th as
17 to the condition of high blood pressure and that subsequent
18 both report the indication of time off being appropriate
19 because of that condition.

20 A. Let's not get any misunderstanding
21 with the word "high" because my blood pressure wasn't
22 that high. It was a little elevated, I think was the
23 term he used.

24 Q. Elevated sufficiently that he thought
25 probably a couple of weeks off would be in order; is
26 that the situation?

27 MR. DEANS: Well, my understanding is
28 if there are any vagueries to clear them up and I would
29 like to be clear on them. I would like to ask through
30 you, Mr. Chairman, to Mr. Cauley, that whether the

1 discussion of your working conditions, whether you
2 discussed your working conditions with the doctor at the
3 time you went for the check-up regarding your elevated
4 blood pressure?

5 THE WITNESS: No, not with Dr. Walsh, no.

6 MR. DEANS: All right.

7 THE CHAIRMAN: Mr. Donnelly?

8 MR. DONNELLY: Thank you, sir.

9 Q. Mr. Cauley, moving on again, if I
10 may, please. I touched this morning on the retroactive
11 effect of the increase in salary that was effective
12 October 1, 1967 and a document is filed that shows the
13 additional payments to you in retroactive form and also
14 after May 1st of 1969. That is correct, I think, is it?

15 A. The ones that were submitted this
16 morning?

17 Q. Yes.

18 A. Yes, I recall them.

19 Q. So that, in effect, you did get
20 whatever you would be entitled to as a result of that
21 increase by way of the salary then?

22 A. Well, I presume that that was the
23 proper thing.

24 Q. It seemed to be in order, did it?

25 A. It seemed to be in order.

26 Q. So you didn't lose anything in that
27 sense?

28 A. Pardon me?

29 Q. You didn't lose anything in that
30 sense. You didn't get the benefit from this retroactive

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1 salary increase?

2 A. I never did, no.

3 Q. I think the record will show, if we
4 go back to it, that the Minister, I think, wrote you him
5 didn't he?

6 A. Yes.

7 Q. Is that correct?

8 A. May I then, just for the record and
9 we are referring to what was tabled this morning -- as I
10 recall this morning there was a Board Order passed on
11 May 8th of 1969 which set out certain things and which
12 I didn't learn of until this morning.

13 Q. Is that accurate, sir, with respect to that?

14 A. May 8th, 1969.

15 Q. Is your statement accurate that you
16 just said?

17 A. Which statement?

18 MR. HUMPHREY: You heard about
19 it at the last Committee meeting.

20 THE WITNESS: I heard about it at the last
21 Committee meeting, yes. I am sorry, I said this morning
22 last Committee meeting, yes.

23 May 8th, the meeting which set out certain
24 things that I was to receive. And the thing that surprised
25 me when I went over at noon today, this is the first time
26 I have seen it in writing, that here is an order, a Board
27 Order passed, removing me under certain circumstances
28 four days before I had finally handed the letter to the
29 Minister of Labour.

30

1 Now, let's get on to the other Exhibit, the
2 letter from Mr. MacDonald that was produced this morning
3 showing the breakdown which I admitted receiving and I
4 did receive and it was in reply to a telephone call from
5 me to Mr. MacDonald for which I thank him. And the
6 reason nothing was said to me at the time or the reason
7 no issue was made is because I had a very, very clear
8 understanding with the Minister of Labour as to the
9 terms of my leaving as a member of the Board on May the
10 1st was the effective date, but it was May 12th in my
11 letter. And we are in a political arena and I had no
12 intention of breaking faith with the Minister and in
13 subsequent to the Minister I have put in writing to the
14 various people confirmed and I wasn't going to write a
15 letter to a member of the staff or where it could get
16 around in the general files and in the general correspond-
17 ence; that would have just made a whole complete political
18 football. This was the reason that I made no issue what-
19 ever of that. Mr. Chairman, if I may say to you, and I
20 want to say this most sincerely and I want to say it with
21 the greatest of respect, that I am here today under
22 subpoena in an honest endeavour, and I say this with
23 great respect to Mr. Donnelly too, to assist ---

24 Q. I don't mind being a casualty, sir,
25 if that's what you mean.

26 A. To assist the Committee in finding
27 facts and that there is only one thing as I read from
28 the resolution in the House that effects my early term-
29 ination because I don't have personal knowledge of the
30 many other things that were involved. But I came here in

1 the hope that I would help the Committee in an Inquiry
2 and, with the greatest of respect, sir, I am sitting in
3 at the roasting of Jack Cauley and I honestly and I say
4 this with the greatest of respect because this is my
5 belief.

6 THE CHAIRMAN: Well I don't think, Mr.
7 Cauley, that is exactly true.

8 THE WITNESS: This is the way I feel.

9 THE CHAIRMAN: I think what procedure
10 we are following today is as a result of previous test-
11 imony you gave to the Committee.

12 THE WITNESS: I agree.

13 THE CHAIRMAN: And I think the Committee
14 is here to hear of anything pertaining to the operation
15 of your severance and the operation of the Board.

16 THE WITNESS: I have no fault to find, Mr.
17 Chairman, with the way this Hearing has taken effect and
18 I think it is perfect as far as I am concerned.

19 MR. DONNELLY: It would scarcely warrant
20 the accusation of being roasted.

21 Anyway, let's get back to the business at
22 hand.

23 MR. LEWIS: If I may, Mr. Chairman.

24 THE WITNESS: I'm sorry, but I still have
25 two other letters.

26 THE CHAIRMAN: Excuse me, Mr. Cauley.

27 Mr. Lewis, what is your point?

28 MR. LEWIS: Mr. Chairman, we are in an
29 entirely novel context in this Committee. We have never
30 tried it before. I suppose most of us are feeling our way

1 and listening. There is, if Mr. Donnelly will forgive me,
2 a pretty considerate adversary flavour about the proceed-
3 ings so far. The presentation or part of the presentation
4 this morning relating to the scrupulous informing of the
5 Board of Mr. Cauley's holiday taking could have been
6 approached in two ways; it could have been approached on
7 a point by point almost courtroom fashion as it was, month
8 by month, year by year or the documents could have been
9 accumulated and indicated by legal counsel overall and
10 an explanation required. Point by point form introduces
11 an atmosphere of, well, an atmosphere in terms of the non-
12 judicial nature of this Inquiry I would have thought was
13 a little inconsistent. It might have been approached the
14 other way. I don't know; I am listening to it as other
15 members are for the first time. I am not competent to
16 judge on how Mr. Cauley feels about the proceedings. If
17 they are perfect in one sense and they are roasting in
18 the other, then my colleague from Lakeshore says that
19 amounts to a perfect roasting. But I do think that we
20 have engaged in certain adversary proceedings so far which
21 may or the Committee with me pursue, but I think we have
22 to be conscious as members of the House.

23 THE CHAIRMAN: We will have to see about
24 that as we go on. I think as further witnesses are
25 called we will have to see.

26 THE WITNESS: Mr. Chairman, if I may just
27 make my point in connection with a letter Mr. Donnelly
28 and I were discussing.

29 Here is a letter of the Board submitted
30 this morning as an Exhibit, dated 9th of May, 1969, four

1 days before the understanding between Mr. Bales and I
2 was consummated. On September the 9th of 1969, almost
3 four months to the day later, the Minister says in the
4 letter that I entered as an Exhibit which he agreed it
5 was his letter, "I want to write you separately in
6 reference to your retirement arrangements and send you a
7 copy of the Board order." Now that order was passed on
8 the 8th of May, four days before I officially resigned.
9 Why couldn't I have -- I haven't had it to this day. May
10 I just finish? On the 12th of September in acknowledgement
11 I said, "Receipt was acknowledged of your letter of Sept-
12 ember 9th to which you attached the cheque covering the
13 salary adjustment and the data set in use in coming to th
14 said amount. I thank you most sincerely for this and I'm
15 looking forward to the receipt of the order in council."
16 And not a Board order, "the order in council" and the
17 Board order which will set it out in more detail. Because
18 I was a member of the Board and the Board is appointed
19 at the pleasure of the Lieutenant Governor in Council and
20 Section 62 of the Act sets out that it's only the
21 Lieutenant Governor in Council that can set out the
22 remuneration of the Board in the period which you shall
23 hold at his pleasure. I would have thought surely that
24 I would have been handed this on the 12th of May when I
25 handed in my letter to the Minister because the order
26 obviously was there and on the record but I didn't see it
27 until I read the transcript at noon.

28 MR. DONNELLY: Q. Mr. Cauley, are you
29 ready to go on again, sir?

30 A. Yes, whenever you are ready, sir.

1 Q. Just another matter just very briefly
2 to clear up. The documents filed rather indicate the
3 Board order you spoke of showed your pension at that time
4 to be \$919.22 and the letter that was filed this morning
5 of August 30th, 1971 showed it to be \$1,206.37 gross. Does
6 that sound correct, sir, to you?

7 A. I think that would be correct because
8 of the various deductions.

9 MR. RICHARD: A copy of the Board order has
10 not been submitted here. I have never seen it and I don't
11 think it has ever been made available to Committee members.

12 We had parts of it read to us last week.

13 MR. DONNELLY: Thank you very much, sir.

14 Q. Could you see if you could identify
15 this, sir? I don't know whether you can identify it or
16 not, but perhaps you could just look at it.

17 A. Is this the one of September 8th?

18 Q. I think so.

19 A. This is what I am now referring to,
20 that I heard Mr. MacDonald state verbally at the last
21 Hearing, but read it in the transcript at noontime today
22 for the first time and this is the first time I have had
23 any personal knowledge of it.

24 Q. Is it the one to which you are
25 referring, sir?

26 A. Yes. But I never saw it before. I
27 want that clearly understood, that this is the first time
28 that I have seen this document.

29 THE CHAIRMAN: For the benefit of Hansard
30 or any other interested persons, this is Exhibit No. 47.

EXHIBIT NO. 47:

Copy of the Board Order, dated
September 8th.

MR. SINGER: Mr. Chairman, could we hear
that read? I would be interested in hearing what that
Board order says.

THE CHAIRMAN: There has been a request to
have this Board order read and it reads as follows:

"Confidential Order of the Board:

The Board orders that on the retire-
ment of Mr. J.F. Cauley the following

benefits be granted: Under the

heading 'Existing Benefits' Mr. J.F.

Cauley will be permitted to use

existing sick leave and holiday cre-
plus a grant of an additional 25 da-

credited to allow payment of full

salary until the normal retirement

date of August 19th, 1971. The

actual pension at that time at the

existing salary level would be

\$11,036 annually which is a monthly

pension of \$919.22. Additional

benefits to be granted Mr. J.F.

Cauley will be granted on addition-

al retroactive adjustment in salary

to be made before the Commissioner

of the Board as if he were continu-

ing in active service as a Commis-

sioner with the resultant adjustme-

in retirement pension. Additional

any adjustments in group insurance

1 during the period until his normal
2 retirement date will be granted. After
3 retirement in 1971 a consultancy fee
4 will be established for one year."

5 The Order is signed as I see it by Mr. Legge and Mr.
6 Johnston.

7 THE WITNESS: Mr. Chairman, I don't want to
8 be facetious, believe me, but this is the first time I
9 have read a death warrant issued four days before I died
10 that took me two and a half years before I had
11 had a chance to read.

12 THE CHAIRMAN: Your point is well taken.

13 MR. DONNELLY: Q. You made reference this
14 morning to your diary and is it available?

15 A. My diary? No, it isn't. I brought
16 part of the day book but it's not ---

17 Q. From your records can you tell what
18 appointments you had on January 6th, 1969?

19 A. Yes. You mean Monday, January 6th?
20 Oh, 1969.

21 Yes, I had lunch with the ---

22 Q. Ten-thirty in the morning I am wonder-
23 ing about, sir.

24 A. Ten-thirty? Hickling and Johnston,
25 yes.

26 MR. DONNELLY: I have no further questions
27 of this witness, Mr. Chairman.

28 Thank you.

29 THE CHAIRMAN: Counsel, you have concluded
30 your questioning of this witness?

MR. DONNELLY: I have, sir.

Thank you.

THE CHAIRMAN: If we follow our order of business it is in order now for the members of the Committee one at a time, to submit questions to Mr. Cauley.

Any questions from any member of the Committee?

MR. DEANS: I have a question from the final statements that were made. Mr. Cauley, did you discuss your possible retirement with anyone of the Board prior to your meeting with the Minister on May 12th?

THE WITNESS: Dr. Steele and I from time to time, you know, we used to say, we kidded one another, he would say, "How are you this morning, Mr. Hearing Officer" and I would say, "I am fine, Mr. Doctor, you look all right" and we kicked it around facetiously.

MR. DEANS: You are going too far back for me. Did you discuss --let me take the months of January, February and March and that portion of April.

THE WITNESS: Of 1969?

MR. DEANS: Of 1969.

THE WITNESS: Yes.

MR. DEANS: From the time that you sat down with your wife and talked about, you know, finally decided that maybe this was the time to make a decision, did you discuss with anyone at the Board the possibility that you were going to retire?

THE WITNESS: No, not to my recollection.

MR. DEANS: Did you discuss with Mr. Eberly when you visited with him that you had made a decision to retire?

1 THE WITNESS: No. The first is the meeting
2 on the Monday of May when Mr. Eberly and Mr. Bales were
3 together and I said to them, you know, it was to me quite
4 obvious ---

5 MR. DEANS: Was that the 12th of May?

6 THE WITNESS: No, the 5th. I said, "You
7 want me to resign, don't you?" And Mr. Bales as near as
8 I can recall it said, "Well, Jack, under the circumstances
9 I think it would be better if you did," and this was the
10 first and only time.

11 MR. DEANS: But did you say to him then that
12 you would?

13 THE WITNESS: Well, yes, I said, "If you
14 think it's better that I resign, fine." So then we
15 started to talk about remuneration if you will I suppose.

16 MR. DEANS: And that is when you sort of
17 decided -- was that when the decision or the statement was
18 made that you wouldn't lose, on the 5th of May?

19 THE WITNESS: Yes, Mr. Bales indicated that
20 he had discussed it with the Premier.

21 MR. DEANS: Prior to that?

22 THE WITNESS: During that meeting. I think
23 his words were that the Premier -- no, it may have been
24 the next time about the actual -- it was either one, but
25 the way that I recall it, he said, "I have discussed this
26 with the Premier" or "the Premier is supporting this,"
27 words to that effect.

28 MR. DEANS: Just for me to better under-
29 stand why your doctor suggested to you that you should
30 perhaps have a couple of weeks off, when you went to visit

1 him in April for your checkup and you discussed -- obvious
2 ly you had some higher blood pressure than normal at
3 that time?

4 THE WITNESS: Yes, I was involved in a
5 couple ---

6 MR. DEANS: Up a little or whatever it was

7 THE WITNESS: I was in a couple of hassles
8 away from the Board. I was trying to settle a dispute in
9 Hamilton.

10 MR. DEANS: I just wondered if the doctor
11 discussed it with you during that period.

12 THE WITNESS: It may have been too, you
13 see, I was on the administrative board of St. Joseph's
14 Hospital in Hamilton and we would sit around having
15 coffee and there was about a dozen of the doctors and
16 they would be saying, "Why don't you pay us rather than
17 getting into all those things," and I may have said
18 something then, but I don't recall it if I did.

19

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1 MR. DEANS: When was the time that you ran
2 to the shopping centre and back?

3 THE WITNESS: As near as I can recall it,
4 it would be around the 7th of 8th of May, in and around
5 there. You are going back three years and I am trying
6 to figure the days back from the day I saw the Minister
7 and the date that the little league baseball started,
8 but it was in that area.

9 MR. DEANS: On the matter of your order,
10 the order of the Board that dealt with the conditions
11 which was dated on the 8th of May, you never were informed
12 that you were going to receive a consultant's ---

13 THE WITNESS: I was never informed and my
14 wife said she almost fell off the chair at the meeting
15 that time and I said I did because that was the first time
16 I had heard of it.

17 MR. DEANS: When you spoke with Mr. Bale
18 on the 5th, was there any indication that you might
19 continue to advise the Board from time to time?

20 THE WITNESS: No. The only thing that I
21 recall, the important thing to me was that, "Jack, by this
22 you won't lose" or words to this effect. But this is
23 really what shocked me, when this thing came in the trans-
24 cript that was made available to me at noon, to find that
25 an order of my demise had been passed on May 8th and still
26 four months later the Minister is still saying that he is
27 going to advise me of it. You know, to me that just doesn't
28 make sense.

29 MR. DEANS: May I ask you just one other
30 question: was it a practise to record the visitations of

11-2

1 friends and acquaintances to your house?

2 Did you have a practise of it?

3 THE WITNESS: Sometimes we would do it, if
4 we would have a little party we would do it and I would
5 play it back.

6 MR. DEANS: If I dropped by to chat with
7 you, you wouldn't be tape-recording it?

8 THE WITNESS: I was suspicious; I was
9 actually suspicious.

10 MR. DEANS: Why?

11 THE WITNESS: Well, because of the various
12 things that happened around the Board. You know, I don't
13 want to get into any type of personalities but I was sus-
14 picious that Mr. MacDonald had been sent over by the
15 Chairman. In fact, I never gave the Minister a thought.
16 I thought he had been sent over by the Chairman. I mean
17 he doesn't come to visit me.

18 MR. DEANS: He is not a frequent visitor?

19 THE WITNESS: I think that may have been
20 the first or second time he was ever at our home. If it
21 hadn't been that it was right there and it was set up because
22 I was doing some things earlier and that there is a remote
23 control switch and I just push the switch. It wasn't hidden
24 it was right where it always was.

25 MR. DEANS: All right.

26 MR. MILLER: There were two items I wanted
27 to pursue a little bit further. Today we have heard
28 testimony from you that in fact you probably were off ill
29 from April 7th onwards.

30 THE WITNESS: I was off -- I accept that.

1-3

1 I said the 15th before because that is in my record.

2 MR. MILLER: Regardless of the date, I am
3 concerned about the cause of absence.

4 THE WITNESS: It could have been that I said
5 to put it on my sick leave instead of my holidays.

6 MR. MILLER: I believe your testimony you
7 gave earlier under questioning you were told by your doctor
8 you weren't well and you should have time off?

9 THE WITNESS: Oh no, I wasn't told I wasn't
10 well, he just said, "Why don't you take two or three weeks
11 off?" In fact, I was better then than I am right now
12 because right now I am running a temperature and I don't
13 know where ---

14 MR. MILLER: Perhaps I have misinterpreted
15 but this is the way I heard it in the questioning of
16 Mr. Donnelly.

17 THE WITNESS: I didn't say that.

18 MR. MILLER: The thing in my mind is the
19 last meeting we had of this Committee on April 5th, a great
20 deal of the time was spent telling us how well you were.

21 THE WITNESS: Yes.

22 MR. MILLER: And these two sets of evidence
23 do seem to be in conflict?

24 THE WITNESS: I still think I am ---

25 MR. MILLER: And again in the morning session?

26 THE WITNESS: I still think I am fairly well
27 because I was playing baseball the 24th of May so it was
28 that close after and all the way through in days that I
29 wasn't out of town -- I played shinny with a group of my
30 colleagues from 8:00 to 9:30 in the morning three mornings

11-4

1 a week so it wasn't a danger as far as I was concerned.

2 MR. MILLER: During the course of the
3 negotiations did you feel you were underpaid or illtreated
4 from a money point of view?

5 THE WITNESS: With Mr. Bales, do you mean?

6 MR. MILLER: In your termination?

7 THE WITNESS: Mr. Bales said to me, as I
8 have said so many times, "Jack, you won't lose," so how
9 could I say that he was unfair. The point that I think I
10 made before was that these jobs were available to me
11 immediately which I couldn't take because, as a member of
12 the Board, you can't be involved in any industry under the
13 Act, under part 1 of the Act and this is why I couldn't
14 go back to the railway.

15 MR. MILLER: Those are the only questions
16 I have, Mr. Chairman.

17 THE CHAIRMAN: Mr. Allan?

18 MR. ALLAN: Mr. Chairman, I would like to
19 ask you or through you, the counsel, could we look forward
20 to witnesses being recalled or not?

21 MR. DONNELLY: I suppose that is entirely
22 within the competence of the Committee but I rather thought
23 you might see fit to do that at some stage. It may be
24 that matters will arise that you may want to recall a
25 witness for a certain reason and I think it is worthy of
26 your competence to do that.

27 THE CHAIRMAN: I would think so, Mr. Allan
28 if need be, and I think it should be that way.

29 THE WITNESS: Mr. Chairman, if I may just
30 this point, that this has cost me a tremendous amount of

1 money to be here this week which I can't afford. I am
2 supposed to be on an International Pipeline Conference
3 in Washington and then next week into a follow-up conference
4 of my international. Why it is so important is those
5 agreements, they are international agreements, usually
6 run for three years so that if any disputes arise out of
7 the interpretation about the fact few are on the Committee
8 so to speak and you don't negotiate it but it is a
9 Committee of an agreement, then you are usually called to
10 act as the arbitrator to settle the agreement. So that my
11 retainer for this week in Washington would be \$500. plus
12 the hotel expenses. They pay your expenses of \$500. If
13 there are no grievances and I am called then I get nothing
14 out of this part of subsequent things. So I would like
15 to get down there as soon as it is possible but I am
16 certainly content to stay until the Committee are
17 finished with me. But the point I am trying to make is
18 that if it gets to the point of the Committee wanting to
19 recall me, I think out of fairness to me now that the
20 recall should be some time after -- like a week from next
21 Friday and this is all that matters to me.

22 THE CHAIRMAN: I think, Mr. Cauley, we will
23 have to play that by ear. You realize we have quite a
24 heavy schedule and it may be that we can complete.

25 THE WITNESS: As I say, if the Committee
26 could do me that favour.

27 THE CHAIRMAN: We will endeavour to co-
28 operate in every way.

29 Mr. Good?

30 MR. GOOD: Two points, Mr. Chairman. First

11-6

1 of all, it is your opinion that your severance from the
2 Board was related more to the problems caused by difference
3 and to your health reasons?

4 THE WITNESS: Oh, I am certain of it.

5 MR. GOOD: The other question is, if you
6 would refer to page 44 where I asked at the last Hearing,
7 I asked this of Mr. MacDonald, "Were you paying him a
8 salary or his credits in that period of time from May '69
9 to August '71?" and Mr. MacDonald answered "We consider it
10 that we are paying him full salary during that period as
11 if he was still on the Board and working full time." Do
12 you agree with Mr. MacDonald?

13 THE WITNESS: Yes, I certainly do agree
14 with Mr. MacDonald.

15 MR. GOOD: That's all.

16 THE CHAIRMAN: Any other members of the
17 Committee that have any questions for Mr. Cauley?

18 MR. DEANS: Just one other, Mr. Cauley. As
19 a member of the Board when other members of the Board
20 retired was it customary to pass an order similar to the
21 order passed in your case?

22 Did you sign similar orders for Dr. Steele
23 and for other members?

24 THE WITNESS: I may have signed for
25 Dr. Steele but I think when we are on that that I should
26 say, as I said, I think this morning and two weeks ago,
27 that as far as the Board were concerned, at least since
28 -- well, I don't know, it was an honour system. Now as
29 far as I know, my things weren't, credits weren't audited,
30 certainly I didn't audit Dr. Steele's credits.

1-7

1 MR. DEANS: I am not asking anything about
2 the credits or anything else. When one of the other
3 Board members retired or left the Board was there an
4 order passed by the Board similar to the order that was
5 passed in your case, this order that you haven't seen?

6 THE WITNESS: Not to my knowledge. In fact,
7 I may have but I don't recall it because when Dr. Steele
8 went to Thailand to visit his son and then came back, and
9 then he telephoned me and he said, "I will be seeing you
10 in a week or two" and he never came and then I was told
11 by somebody on the staff, I couldn't recall who, he wasn't
12 going to come back. And I am not sure where I saw the
13 next but it was way into the fall of 1968 where it said
14 on Order-in-Council had been passed but I do not recall
15 signing it.

16 MR. DEANS: You do not recall an order by
17 the Board?

18 THE WITNESS: No, I don't.

19 MR. DEANS: To the best of your knowledge,
20 can you recall whether there were in fact Orders-in-
21 Council passed at the time that resignations took place of
22 members of the Board, previous Boards?

23 THE WITNESS: I think so.

24 MR. DEANS: Do you recall ever seeing one?

25 THE WITNESS: I never saw any. I saw them
26 after they had been passed, like when Mr. Sparrow retired
27 and Dr. Galbraith died but it would be months and months
28 after.

29 MR. DEANS: You did see them though?

30 THE WITNESS: I have seen Orders-in-Council.

11-8

1 MR. DEANS: Saying they have been retired?

2 THE WITNESS: Resigned or retired.

3 MR. DEANS: But never orders of the Board
4 setting out the conditions of retirement?

5 THE WITNESS: No, not that I recall and I
6 am sure that I would recall.

7 THE CHAIRMAN: Are members of the Committee
8 through?

9 MR. DEANS: Just one final: I am correct
10 in my recollections, you did say Dr. Steele retired prior
11 to age 65?

12 THE WITNESS: Oh yes. I believe he was
13 either 62 going on 63 -- I think it was 62 going on 63 or
14 61 or almost 62. Before 65, yes.

15 MR. DEANS: So he took an early retirement?

16 THE WITNESS: Yes, he went before his 65th
17 birthday. I think that is correct.

18 THE CHAIRMAN: Well now, we will get on
19 with questions, if any, from other members of the Legisla

20 Mr. Singer?

21 MR. SINGER: Mr. Cauley, you said a few
22 moments ago, and I think I wrote this down correctly, "I
23 had a very clear understanding with the Minister as to the
24 terms of my leaving."

25 THE WITNESS: Yes, that I wouldn't lose
26 anything.

27 MR. SINGER: Was that the extent of the
28 clear understanding and the extent of the word "terms"?

29 THE WITNESS: It was the key to it. I mean
30 it wasn't the long thing. It certainly was the key. He

1 said, "Jack, you won't lose from this."

2 MR. SINGER: Was there anything spelled out
3 in further detail than just the Minister's phrase, "Jack,
4 you won't lose anything"?

5 THE WITNESS: Not until I received this
6 letter from him on the 9th of September, some four months
7 later.

8 MR. SINGER: Mr. Cauley, in this letter
9 of the 8th of May that spells out the things that were
10 read a few moments ago, do you feel that was fair to you
11 or unfair to you?

12 THE WITNESS: If it is completed, if it is
13 honoured, then that's fine with me, if it is honoured,
14 and we were only, at the time of my discussions with
15 Mr. Bales, we were talking entirely as to the salary of
16 the Vice-Chairman. There was nothing else that entered
17 into the picture so that if it is honoured then I have no
18 quarrel with it.

19 MR. SINGER: In other words, if you get
20 everything that is mentioned in this memo of May 8th, you
21 feel you would be fairly treated?

22 THE WITNESS: Yes, I would accept that.

23 THE CHAIRMAN: Are you completed, Mr. Singer?

24 MR. SINGER: Yes.

25 THE CHAIRMAN: Mr. Lewis?

26 MR. HUMPHREY: Sorry, Mr. Chairman, perhaps
27 this is my fault. Mr. Cauley said that it will give me
28 another year and that will be all right. I am just
29 pointing out to Mr. Cauley, I don't think he understood
30 Mr. Singer's question.

11-10

1 THE WITNESS: I meant another year here
2 but I still feel that I am entitled to the six months
3 credits and most certainly to the 29 weeks holidays which
4 I earned for staying around for so long when others were
5 ill.

6 I thought you were talking just salary,
7 was I involved, because I understand that the salaries
8 have increased.

9 MR. SINGER: No. What I wanted to know
10 and let me repeat it again, in case there is any doubt,
11 Mr. Cauley. Is there anything in addition to all of the
12 figures in references that are made here that you feel
13 you are entitled to?

14 THE WITNESS: Yes.

15 MR. SINGER: What is it?

16 THE WITNESS: The 29 weeks accumulated
17 holidays, the six months sick leave credits, in accordance
18 with the same regulations that applied in the Civil Service.
19 I am sorry, Mr. Singer. I thought you were talking salary
20 only.

21 MR. SINGER: It may be we undoubtedly
22 didn't understand.

23 That is all, Mr. Chairman.

24 THE CHAIRMAN: Mr. Lewis?

25 MR. LEWIS: Mr. Chairman, this first question
26 may perhaps -- counsel may perhaps explain it to me, just
27 a matter of the language. In the letter of April 21st,
28 mentioning the sum of \$18,000. paid to you, the
29 amount paid to you arising out of attendance and
30 vacation credits which you had earned, what is the meaning
of the word "attendance"?

1 MR. DONNELLY: That is addressed to me and
2 it may be presumptuous of me to attempt to explain someone
3 else's letter but I can only tell you what I thought it
4 meant, Mr. Lewis, and that must be obvious to you, as well,
5 I suppose. I can't give any definitive answer as to what
6 that means. If you wish to know what I think it means,
7 I will say so. If that's of no interest to you, I can't
8 go beyond that.

9 MR. LEWIS: No, fine, please tell me what
10 you thought it meant.

11 MR. DONNELLY: I read it and I thought it
12 was attendance and vacation pay, as a result of the
13 attendance on the Board he had certain credits and whether
14 that's sick credits, I don't think it's clear on the face
15 just as to what exactly it does mean but that's the meaning
16 I thought it probably meant.

17 MR. LEWIS: Is that what it means to you,
18 Mr. Cauley, in terms of the language of the Board?

19 THE WITNESS: It means you accumulate a
20 day and a half sick credit, same as the Civil Service,
21 for each full month of employment and the Board members
22 were entitled from the time I went there to one month's
23 holidays per year so the attendance credit is because of
24 my long attendance record and good health over the period
25 and holidays I earned when I had to stay when others were
26 ill.

27 MR. LEWIS: Mr. Cauley, when you use the
28 phrase about the Minister, Mr. Bales, saying to you,
29 "You won't lose, Jack" or words to that effect, words to
30 which I don't think Mr. Bales took exception at least as

1 to their intent from last meeting, but I must be
2 careful about that, I can't recall exactly. But I
3 wondered, have you any idea how the Minister would know
4 or what he would mean? As I take it, Mr. Bales had not
5 seen the order and the Board order having not gone to the
6 Minister, the Minister having not yet sent it on to you
7 in September, what did you interpret by, "You won't lose
8 ---" He clearly would not have known your accumulated
9 sick leaves and credits of entitlement, I take it?

10 THE WITNESS: Not from me, he wouldn't.
11 Whether he would from the Board or not I am not sure.
12 This to me was a pressure move and when you are in a
13 pressure move you decide, "Well now, what is it worth?"
14 The same as if you are buying a car, this is how I
15 interpreted it. I said "Why?" and he said -- I just
16 forget now but he said, "As long as you are there," I
17 think maybe one of the terms he used "the place will be
18 in a turmoil" because if it's your fault if it is in
19 a turmoil, I think this is what he meant when he said,
20 "under the circumstances I think you should resign."
21 Now this is only my interpretation. And then I said,
22 "Well, where do we go from here?" or words to that effect
23 and he said "Jack, I have discussed this with the Prime
24 Minister" and he said, "Well, Jack, you won't lose."

25 MR. LEWIS: Mr. Cauley, you have made a
26 number of allusions this morning to the turmoil at the
27 Board and were they largely confined to the personality
28 differences or the differences of opinion between your
29 and Mr. Legge? Did they extend to other officers of the
30 Board?

1 THE WITNESS: No, I wouldn't say that
2 because I think Mr. MacDonald said last meeting that
3 senior people, 50, left under similar arrangements; I
4 think his words were to me which would mean they were
5 long term employees or otherwise they wouldn't have
6 accumulated this many credits. Oh, there were so many,
7 the Chief Medical Officer left, the Assistant Chief
8 Medical Officer left, Dr. George Bastedo who was the
9 head of the medical set-up at the Marathon Corporation
10 before he came with the Board and he left and I am sure
11 that if he is around Toronto he will say this most bitter.

12 MR. LEWIS: Dr. Bastedo? He is in
13 Portugal I understand.

14 THE WITNESS: Because the so-called ---

15 MR. LEWIS: But the implications --
16 certainly Mr. Donnelly's insistence on your refining the
17 accuracy of what you are saying is pretty important this
18 morning and there are so many implications flowing from
19 what you are saying, the implication now that all 50 left
20 because of problems in the Board. What are you talking
21 about?

22 THE WITNESS: Well I am certain of this ---

23 MR. DONNELLY: Mr. Chairman, may I make
24 a submission here?

25 THE CHAIRMAN: Yes.

26 MR. DONNELLY: One reason this Inquiry
27 got off the rails last time, and today I haven't made
28 one objection about hearsay evidence but I think it is
29 a very grave danger that the Committee should consider
30 this. Mr. Cauley started to say "I am sure if Dr. Bastedo

1 | were here he would..." Unfortunately Mr. Lewis interrupted
2 | him and said he is in Portugal. Had he been here in the
3 | city we probably would have heard and Mr. Cauley would
4 | tell if he were here and it's most irregular, I think, for
5 | a witness to be asked why some 50 other people left the
6 | Board and I think you leave yourself open to just an
7 | absolute morass of confusion. That is my submission to
8 | you.

9 | MR. LEWIS: I agree, Mr. Chairman, because
10 | the implications are raised, I am asking you, Mr. Cauley,
11 | what you mean by your references and allusions throughout
12 | the day about the conflicts. What are you talking about?

13 | THE WITNESS: I think it's a state of mind
14 | really, you know, when you leave. I can personally say
15 | if there was some guarantee here, if there were people,
16 | and I don't intend to name people without a guarantee that
17 | their positions aren't going to be jeopardized, but it
18 | isn't the happy family working to really protect the
19 | injured workman that it was and too many people that have
20 | come to me that are still there and who have said, well,
21 | just as if you are in jail counting off the days where
22 | their age, their years of service and their accumulated
23 | sick credits will take them to 60 so they can leave. That
24 | is what I mean.

25 | THE CHAIRMAN: Mr. Cauley, I am hoping you
26 | wouldn't say "too many people have come to me." If you have
27 | a specific example, yes, but I think again this is vague
28 | and hearsay.

29 | THE WITNESS: I could give you two but I
30 | won't.

1 MR. LEWIS: Mr. Cauley, the only particular
2 reference I can recall your making is your irritation
3 at remaining in rooms talking to yourself about the
4 alleged removal of a Chairman from the meeting. That
5 is the only specific ^{reference} / I recall about the so-called turmoil
6 and antagonism at the Board. Do you leave it at that?

7 THE WITNESS: Well, this happened, yes.

8 MR. LEWIS: And you cannot tell this
9 Committee of any other things which contributed to your
10 clear dissatisfaction?

11 THE WITNESS: The other frustration of
12 trying to have the corporate body sit down and intelli-
13 gently discuss administrative problems, and especially
14 with the Minister, because somebody had to give it some
15 direction.

16 MR. LEWIS: Mr. Cauley, can you go over
17 the time sequence with me? I am sorry, I didn't get it.
18 You left on April 7th, 1969. Somewhere between April 7th
19 and May 12th, you visited Mr. Eberly, if I understand?

20 THE WITNESS: I went to his house on the
21 7th.

22 MR. LEWIS: And you were visited by
23 Mr. MacDonald, I understand.

24 Can you give us the dates of those two
25 events between the 7th of April and May 12th?

26 THE WITNESS: No, I am not sure of the
27 dates. I remember Mr. Eberly's was a Sunday because I
28 went over on a Sunday and he was out in the back erecting
29 one of these garden sheds for his lawn mower and other
30 things so it was prior to that. I wouldn't know the

1 exact date, Mr. Lewis, no.

2 MR. LEWIS: You saw Mr. Eberly before
3 Mr. MacDonald saw you?

4 THE WITNESS: No, after.

5 MR. LEWIS: After Mr. MacDonald saw you?

6 THE WITNESS: After. This is why I thought
7 we should have a meeting with the Minister.

8 MR. LEWIS: Do you recall how much in
9 advance of your meeting with the Minister you saw
10 Mr. MacDonald approximately?

11 THE WITNESS: It would be I would think
12 10 or 15 days but with Mr. Eberly it was the Sunday before
13 the day that I met with Mr. Bales.

14 MR. LEWIS: Last week, Mr. Cauley, or two
15 days ago, you were going to undertake or you thought you
16 would have the opportunity to see ^{how} much you had in fact
17 worked between January 1st, 1969 and April 7th or April
18 15th, 1969. Did you go through your day book to see?

19 THE WITNESS: I accepted the 7th rather
20 than the 15th but I worked up to then -- there were
21 two or three meetings out of town I had as part of Board
22 business.

23 MR. LEWIS: Did you calculate the number of
24 days or number of hearings from January 1st to April 7th?

25 THE WITNESS: No, I didn't.

26 MR. LEWIS: Did you work at a pace comparable
27 to that in the years '66, '67, '68?

28 THE WITNESS: As far as hearings are
29 concerned?

30 MR. LEWIS: Yes.

1 THE WITNESS: Oh yes.

2 MR. LEWIS: Right through until April 7th,
3 1969?

4 THE WITNESS: Yes. Or the Friday before
5 which was Good Friday you see so you run your full week.

6 MR. LEWIS: Did everyone at the Board know
7 that you had done this, that you were working steadily?

8 THE WITNESS: I am sure they did because
9 Dr. Steele and I were at a majority of claims appeal
10 hearings, a great majority, so they would know; it would
11 be on the record because the claim file record with the
12 court reporter's record would show all of the particulars
13 of the particular hearing and the Board members that were
14 there.

15 MR. LEWIS: All right, but what about all
16 this talk of illness then? Are we in fact -- is this just
17 a device? I think Mr. Deans asked you that, if I recall,
18 Frank Drea asked you that at the last meeting. There is
19 something singularly inconsistent, isn't there, Mr. Cauley,
20 about having a pattern of work performance for four years
21 and three months virtually uninterrupted, except for
22 holidays, and then a sudden departure of the Board. Does
23 it stand to reason? It doesn't to me, that suddenly
24 everybody would be worrying about catastrophic illness.

25 THE WITNESS: The only thing I could say
26 I suppose in answer to you, Mr. Lewis, would be Mr. Bales'
27 statement to me which I am not sure whether he made at the
28 Committee or in the House or maybe both but "Under the
29 circumstances, Jack, I think you should leave." Now what
30 his interpretation of the circumstances that had been

1 related to him, I haven't any idea. But certainly it
2 had to do with the place not operating smoothly, I don't
3 think there is any doubt about that.

4 MR. LEWIS: I only have one last question
5 Did you say there were no full Board meetings at all with
6 the Minister in the year 1968?

7 THE WITNESS: In 1968?

8 MR. LEWIS: Yes.

9 THE WITNESS: We didn't have a meeting
10 with the Board as a corporate body.

11 MR. LEWIS: The three Board members and
12 the Minister did not meet?

13 THE WITNESS: Pardon me?

14 MR. LEWIS: Did not meet once through 1968?

15 THE WITNESS: Not in 1968. We did in
16 1967, six or seven times, but my day book doesn't show
17 it nor does my diary and I am presuming that this is
18 correct because I am going back now four years. But to
19 my knowledge I don't recall one meeting with the Minister
20 as a corporate body.

21 Now I met with him as an individual, yes.

22 MR. LEWIS: That's all.

23 THE CHAIRMAN: Mr. Lawlor?

24 MR. LAWLOR: Mr. Cauley, you seem somewhat
25 vague today. If I may sum up with trepidations, since I
26 was not here at all times with three heads as what I have
27 seen and what I have heard thus far as to bones of
28 contention inside the Board. First of all, you have seen
29 kind of misalliance, to say the least, with Mr. Hamilton.
30 I would like to explore that for a moment to -- after

Cauley,

1 get finished -- second thing, your accusations against
2 the Chairman that he not only refused to take hearings
3 or neglected to take hearings but that he would not
4 consult with the Board along the way, and thirdly, you
5 had some very grave misgivings about the appeal procedures,
6 the way in which the Board operated. First of all, does
7 that cover the waterfront or are there other matters
8 that we can put our finger on?

9 THE WITNESS: I think that covers the
10 waterfront.

11 MR. LAWLOR: Well then, I don't want to
12 get deep into personalities here nor cause a slandering
13 contest, but I am not very clear as to what your quarrel
14 with Mr. Hamilton was. He apparently, according to some
15 of your evidence, page 16 of this transcript you say,
16 "I don't want to go into it again because Mr. Hamilton
17 was screaming because I wasn't out of there the fall
18 before." Could we have a little more exploration of that
19 relationship?

20 THE WITNESS: Well, the only thing that
21 I can say, sir, that you can choose your friends and not
22 your relations and I wouldn't choose to call Mr. Hamilton
23 a friend of mine.

24 MR. LAWLOR: That is as far as you would
25 care to go today?

26 THE WITNESS: That is as far as I would
27 care to go.

28 MR. LAWLOR: We will hear Mr. Hamilton
29 and we may ask you to adumbrate.

30 Did you keep any kind of record at all as

1 to the failures, if you will, of the Chairman of the
2 Board to attend what you considered his responsibilities

3 THE WITNESS: No other than the records
4 the Board would show. I am sure that discounting holiday
5 time and at any time I was away officially on business
6 that I didn't miss a claims appeal hearing. I think the
7 same could be pretty well said for Dr. Steele. I am satisfied
8 in saying that I am reasonably certain that I attended
9 at least 90% of those hearings and an extremely high
10 percentage of them I chaired and the only way I know of
11 that you could get the exact record, because I don't keep
12 it, would be to have a list of all the claims appeal
13 hearings, a copy of the decision that went to the work
14 which will show those in attendance and a copy of the
15 transcript from the court reporter of the hearing.

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1 To me that is the only accurate way that you will get
2 an answer to that. But I don't have it.

3 MR. LAWLOR: These hearings would show
4 who was slated to appear on these occasions, would they?

5 THE WITNESS: They would show who actually
6 appeared and conducted the hearings.

7 MR. LAWLOR: That is true, but wouldn't
8 give an indication as to who was again slated to appear.
9 You only need two of the three to have the hearings; isn't
10 that correct?

11 THE WITNESS: You don't slate any person.
12 Two creates a quorum. All three are certainly available
13 and are to participate in the determination of the workman's
14 rate. This is what you are appointed for, to determine
15 the workman's rate to compensation. This is what the
16 Act says.

17 MR. LAWLOR: You feel all three are on call
18 at all times except for a very good reason?

19 THE WITNESS: It always was up until 1965.
20 I don't ever recall a Board member being in the office at
21 the time that a claims appeal would be heard and not being
22 in there participating in it. I don't recall any time.

23 Now there would be a number when only two
24 would be present through illness or absence on Board
25 business or absence on holidays, but on all my years at
26 that Board I do not recall one case of a claim being
27 determined or the workman's right determined at the Board
28 level where the three Board members did not sit in on it
29 jointly if they were in the office at the time.

30 MR. LAWLOR: How would you take the argument

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1 | that the failure of the Chairman to pull his weight as you
2 | see it is easily explained in terms of the overall interna
3 | operation of the Board, that he had many other responsibil
4 | ities to attend to? How would you answer that?

5 | THE WITNESS: I don't know of any other
6 | responsibilities. Section 61 of the Act sets out specific
7 | ally that you must devote the full of your time to the
8 | adjudication if you will or the operation of Part 1 of
9 | the Act and I had every reason to believe that this was
10 | not the case.

11 | MR. LAWLOR: You don't think the administra
12 | tive chore was sufficiently onerous and sufficient to
13 | remove him from the scene?

14 | THE WITNESS: No, I do not, because it is
15 | not a one man board. The whole concept of this Meredith
16 | and Bancroft system of Workmens' Compensation was that it
17 | would be a joint corporate structure as is set out so
18 | clearly in the legislation and that those three acting
19 | as the corporate body would determine the administrative
20 | policies and the workman's rights and all of the other
21 | things that are involved in it. I certainly would disagree
22 | to say that the chairman or the vice-chairman or the
23 | commissioner has such administrative duties that he should
24 | absent himself very often from a hearing because this is
25 | the prime function of that operation is to determine the
26 | workmans' entitlement to compensation; there is no other
27 | part that is involved.

28 | MR. LAWLOR: Thirdly, as to the appeal
29 | procedures themselves, I take it this afternoon that you
30 | still have several complaints against the way in which tho

1 appeal procedures are being conducted?

2 THE WITNESS: Take it this way, Mr. Lawlor.
3 Every group of organized labour has documented their
4 opposition to it. Not one other Board in Canada that I
5 know of has copied it. It came out at the last Hearing
6 I believe that a substantial group -- and I don't mean
7 in numbers substantial, but a group of large employers
8 objected to the administrative procedures. Most certainly
9 Mr. Justice McRuer has in his 26 specific recommendations
10 in his Volume V, final volume, I think it is Volume V or
11 III and I appeared before Mr. Justice McRuer and this is
12 long after I had left the Board of course and the impress-
13 ion that I got from all the questions that he asked me,
14 the impression that I got was that the system was a partial
15 adversary system and as such a workman's rights weren't
16 being protected. And when I read his report -- this is
17 some time later of course -- this confirmed my interpret-
18 ation of the way that he was questioning me. You can talk
19 about, Mr. Counsel, if I may, sorry, Mr. Chairman, I'm
20 not looking at you when I do this but there are two
21 gentlemen in the room who are in an official capacity of
22 organized labour both of their groups appeared before
23 Mr. Justice McRuer and I can't speak for them, but I have
24 had discussions over the months and this is the impression
25 that they had too before the report was printed.

26 MR. LAWLOR: Do you have any objection to
27 the thought of many including myself that the Board is the
28 first invented perpetual motion machine in that it can go
29 up the four steps and then you begin to revolve around
30 again. It is very satisfactory from legal counsel's point

13/4

1 of view, your appeals are never ended and you always can
2 tell the client that tomorrow will be a brighter day no
3 matter how many times you have had your case heard. Do
4 you take any objection to that?

5 THE WITNESS: I think it has brought the
6 legal adversary system in a system that was set up to
7 keep it away and in California they no longer and for
8 the last seven years that I know of they call it the
9 Lawyer's Full Employment Bill. They no longer refer to
10 it as Workmen's Compensation and you will find it
11 documented.

12 There was always an appeal within the
13 system. All it took was a letter from a workman or
14 somebody representing him saying, "I am dissatisfied with
15 the decision," or, "I don't like it," and the claim then
16 automatically went to a higher level. No person who
17 made the initial decision was allowed to touch it unless
18 it was a question of earnings which I mean really wasn't
19 involved in the determination of the workman's rights.
20 But the orders were it always had to go to a higher level
21 and we even went beyond that in what they called the
22 old review committee composed of the most senior and
23 experienced compensation people on the staff. If they
24 weren't unanimous in their finding it automatically went
25 to the Board. Or if the chief claims officer in discussion
26 with whoever his subordinates happened to be with
27 were handling the problem, if he felt this may involve
28 new policy it automatically went to the Board, the same
29 day or the next day. An appeal, and this isn't new, it
30 has been going on since 1915 and I think the two

3/5

1 architects of this legislation are the ones that have
2 deserved the credit and I'm talking about Sir William
3 Meredith and the late Bancroft, Mr. Bancroft.

4 MR. LAWLOR: I have just one other
5 question. This run of yours down to the plaza over the
6 lunch hour, have you been able to determine whether that
7 was taken prior to seeing the Minister or afterwards?

8 THE WITNESS: I think it was a couple of
9 days after. I will have to go and check, but it was
10 after the first meeting with the Minister.

11 MR. LAWLOR: If it were after the meeting
12 with the Minister ---

13 THE WITNESS: After the first meeting.

14 MR. LAWLOR: Was it because of anything
15 the Minister said that induced you to take that trot?

16 THE WITNESS: I don't know. When you get
17 back to trying to interpret under the circumstances you
18 should resign, which is the lesser of all evils, I
19 couldn't answer that because I am not sure.

20 MR. LAWLOR: Let me ask you this: Did you
21 have any understanding after talking to the Minister or
22 was it intimated to you in any way that to have a little
23 high blood pressure might be the best thing in the world
24 for you?

25 THE WITNESS: No, we didn't talk about
26 that at all.

27 THE CHAIRMAN: Have you completed, Mr.
28 Lawlor?

29 Are there any other members of the
30 legislature that have questions?

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1 MR. LEWIS: May I ask a question, Mr.
2 Chairman, to you, sir?

3 Am I right in thinking that we were
4 to have the records of attendance at claims hearings
5 at the Board level brought to this Committee? Was that
6 not undertaken at the last meeting, and if so, could it
7 be filed as an Exhibit? It bears germanely on our
8 discussion.

9 MR. DEANS: If I may, Mr. Chairman, I
10 asked counsel to acquire those records for the years 196
11 '68 and '69 to the end of April.

12 MR. DONNELLY: I think they are available
13 If I may be excused?

14 MR. DEANS: While we are getting the
15 records may I ask two questions?

16 THE CHAIRMAN: I intended if the members
17 of the legislature had completed we were going to revert
18 back to questions the Committee had, there were just
19 two or three questions.

20 MR. DEANS: Mr. Cauley, I have one of the
21 inter-departmental communications, Exhibit No. 46, and
22 it is from the Director of Medical Services, Dr. Powell,
23 and he says that he received a telephone call from Dr.
24 R.G. McHarg with regard to your condition. Did you ask
25 Dr. McHarg to call the Board?

26 THE WITNESS: No. I think it was auto-
27 matic since I took the coronary that they used to call.
28 In fact, I think at one time he used to call Dr. Bell
29 Mr. Rowntree said, "I want to be kept posted on how you
30 progress." You see, I took it when he was the Minister

1 of Labour and it is pretty hard to answer because I
2 don't know. But I would think that maybe he has called
3 and said whatever is in this. You know, I have no way
4 to say whether this is true or whether it isn't.

5 MR. DEANS: The reason I ask you, it would
6 strike me, or let me ask you, do you know whether or not
7 on previous occasions when you dropped by the doctor's
8 office for your checkup that he called within four days
9 to the Board and informed them of your condition?

10 THE WITNESS: I think it happened, and
11 there is only once that I can recall, and I am pretty
12 sure it was to Dr. Bell and this was the first -- I think
13 this would be in '66 because I think it was at the time
14 of the McGillivray Royal Commission Inquiry and he was
15 a little disturbed as to whether this was going to excite
16 me or something and I went in for an electro-cardiogram
17 and they checked then and a urinalysis check and I think
18 they called -- I'm pretty sure it was Dr. Bell they talked
19 to because he was the senior medical man. Well, he wasn't
20 the head of the department, but I think he was a personal
21 friend or something. I wouldn't be sure.

22 MR. DEANS: So there was a telephone call
23 from your doctor to the Board every time you dropped by
24 for a checkup?

25 THE WITNESS: No, just when they were
26 worried about things that may be upsetting me for example.

27 MR. DEANS: One final question from me:
28 The setup of the Board, the three persons, was that set up
29 in order to ensure that there would never be a stalemate?

30 THE WITNESS: I am sure it was and I am sure

13/8

1 it was set up so that not only the workman's rights are
2 protected, but the employer's rights; that it was set up
3 so that you would arrive at a unanimous decision from
4 three different viewpoints.

5 MR. DEANS: Was it possible for the three
6 members of the Board to arrive at different decisions;
7 in other words, to have a majority decision rather than
8 a unanimous decision?

9 THE WITNESS: Not before 1965.

10 MR. DEANS: In other words, the Board
11 always came to the same conclusion?

12 THE WITNESS: If we had a real tough
13 problem and we couldn't come to a unanimous decision, and
14 I am talking about in the days of Mr. Sparrow and Dr.
15 Steele and myself and Mr. Bancroft in Mr. Morrison's time
16 we would say, "Let's sleep on it for a couple of days and
17 see what we can do," and they would start out maybe two
18 or three days later, but from my knowledge as far as I
19 can recall that prior to 1965 there was never a Board
20 hearing on appeals or a Board handling of an appeal, be-
21 cause they didn't always end up in hearings, that the
22 decision wasn't unanimous among those who were sitting
23 on it or attending it and it may only have been two
24 because there may only have been two Board members present.
25 But I don't ever recall it because that in itself in my
26 humble opinion indicates that something is wrong because
27 the Act specifically sets out, Sir William Meredith set
28 it out that the legislation would remove the onus of proof
29 from the shoulders of the injured workman because he was
30 giving up certain other things. So that if it were a

1 to one thing it would appear to me that there would be
2 no trouble in making it unanimous because you would think
3 then that there is the benefit of the doubt should go to
4 the injured workman and this is what the Act said.

5 When there were only two of us on those
6 hearings we came to a unanimous decision, no doubt about
7 it.

8 MR. DEANS: Thank you.

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1 MR. ALLAN: The figure of \$18,000 that
2 has been mentioned several times today, and I have to
3 admit that I am confused as to what that \$18,000 refers
4 to. I had thought that it was mentioned partially in
5 connection with the payment of retroactive increase in
6 salary and yet in the discussion here just lately I gather
7 ed from Mr. Cauley's answers that this was in payment of
8 certain sick benefits, sick pays that he had accumulated.
9 Could the counsel straighten that up and clear my mind
10 in that regard? Because I am wondering if some of the
11 accumulated sick days were paid for at that time and
12 included in the \$18,000, whether that had some effect on
13 payments later?

14 MR. DONNELLY: Mr. Chairman, may I?

15 THE CHAIRMAN: Yes.

16 MR. DONNELLY: I have Exhibit No. 22 before
17 me and the figure was referred to as \$18,173.75 and from
18 that Exhibit it appears to be made up in this manner:
19 that it deals with the payments made by the Board to Mr.
20 Cauley subsequent to May the 1st, 1969 and for the pay
21 period May the 2nd to December 31st, 1969 there were 35
22 pays and at the old rate of pay, that is, prior to the
23 retroactive increase he was entitled to \$394.25 a week for
24 35 weeks or \$ 8,798.75. Then the retroactive payments
25 were made -- I'm not sure they were retroactive really at
26 this time but the payment was authorized by the raise that
27 came into effect on the 1st of October, 1967 resulting in
28 an additional \$125 a week being paid for those same 35
29 weeks and they total \$4,375 and those figures totalled
30 together make \$18,173.75. So that in one sentence it is

1 the amount apparently paid to Mr. Cauley by the Board
2 between May 2nd, 1969 and December of 1969 taking into
3 account the old rate and the new rate.

4 MR. ALLAN: It had nothing to do with
5 sick credits?

6 MR. DONNELLY: Well, to this extent. There
7 was accompanying, I think, by Mr. Bale from the Board that
8 wrote that letter and I think it was a letter that
9 Mr. Lewis referred to when he asked me about the inter-
10 pretation of attendance and vacation credits and I think
11 the two documents would have to be read together.

12 MR. ALLAN: Or vacation credits?

13 MR. DONNELLY: Right.

14 THE CHAIRMAN: Does that clear it up now?

15 MR. ALLAN: I think that I am right now
16 that it had no reference to vacation pay or sick benefits.

17 MR. DONNELLY: To this qualification, I
18 think that is the issue before you. Mr. Cauley says it
19 doesn't and as I understand it the Board order May the
20 8th says it is. Now that is the question for you I
21 think.

22 THE CHAIRMAN: Mr. Miller?

23 MR. MILLER: Yes. I have several ques-
24 tions, Mr. Chairman, that arise from looking over the
25 Exhibits and from some of the testimony. The first thing
26 I would like to say would apply to Mr. Lewis. It's
27 quite right the evidence today would seem to be an
28 adversary situation, but of course we are only dealing
29 with one person's evidence and I would hope that we
30 will be as thorough with all people that come before us.

1 The first question that I would have in
2 my mind is this: If you were faced do you think a proper
3 route was followed in fact encouraging your retirement
4 because of the disagreement between you and Mr. Legge?
5 In other words, when a deep disagreement occurs like
6 that it stops the functioning?

7 THE WITNESS: I think you would have to
8 ask the Minister. I don't know what the Minister had
9 in his mind, whether we took the proper course or not.
10 It wouldn't be my way of settling a disagreement. It
11 would be a matter of bringing all parties together and
12 ironing them out.

13 MR. MILLER: I understand this would have
14 been done had the Minister not called you together?

15 THE WITNESS: Just the method and I set out
16 the part in detail, my part.

17 MR. MILLER: You mentioned you were Irish
18 and you never backed away from a fight and you mentioned
19 that several times, but I'm curious to know how this
20 then ties in with your statement that when you appeared
21 before the cabinet to discuss the changes in the appeal
22 procedures being brought before the Workmen's Compensation
23 Board (A) you signed the document, and (B), you were
24 instructed not to talk. I find it difficult to believe
25 that you would not talk if you disagreed.

26 THE WITNESS: We weren't there because
27 of the appeal procedures. We were there because of the
28 cabinet getting ready as a matter of government policy
29 to table those amendments in the legislature and Mr.
30 MacDonald said to me, "The Minister doesn't want you to

1 say anything because he doesn't want anything disturbed
2 in the cabinet." So Mr. Johnston and I who had at that
3 time had had -- oh, we had had more than 45 years of
4 actual compensation administrative experience -- it
5 just seemed awfully strange that we were put over against
6 the back wall of the cabinet room while the discussion
7 took place.

8 MR. MILLER: What I was pointing out is
9 that this seemed to be not in keeping with your statement.

10 THE WITNESS: I never back away from a
11 fight, I don't care who it is, but if this was the
12 Minister's request I wasn't going to embarrass him in
13 the cabinet. After all, I have no authority in cabinet.

14 MR. MILLER: The last question stems from
15 the last question asked by the counsel. Several times
16 you mentioned that you were unaware of any review of the
17 salaries of the Board?

18 THE WITNESS: I said of the vice-chairman.

19 MR. MILLER: Exhibit 10 filed in here is
20 I think a Board Order authorizing Hickling and Johnston
21 to review the Board's salaries and it is signed by your-
22 self.

23 THE WITNESS: I was quite aware of that.

24 MR. MILLER: And you had a meeting with
25 them subsequently on the date that was mentioned?

26 THE WITNESS: I wouldn't know about the
27 date, but we met with them and we met with the Committee
28 and then they discussed with me because I had a group
29 that were dealing with specialized services and
30 specialized claims.

1 MR. MILLER: I'm talking about yourself,
2 you and the last question brought up by Mr. Donnelly, wh
3 was this?

4 THE WITNESS: At the meeting, but I don't
5 recall at that meeting the specific status and salary
6 of the vice-chairman was discussed or shown because
7 \$35,000 just doesn't ring a bell in any way, shape or
8 form.

9 MR. MILLER: It's not the question of a
10 specific salary, but the fact is that you said you were
11 not aware of the review of the salaries.

12 THE WITNESS: Well I was talking about tw
13 weeks ago Wednesday was the salary of the vice-chairman
14 because this is what the Minister referred to in Hansard
15 if I read it correctly; that I knew the review was going
16 on and because I knew the review of my salary.

17 MR. MILLER: This is not what I would
18 conclude from last weeks testimony.

19 THE WITNESS: Then I'm sorry because it's
20 the way I phrased it, I suppose.

21 MR. MILLER: The last question, and you
22 mentioned it several times, the absence of Mr. Legge on
23 military leave.

24 THE WITNESS: Yes.

25 MR. MILLER: In Exhibit 12 you signed a
26 Board order stating you approve of him leaving on milita
27 leave?

28 THE WITNESS: But that wasn't specific.
29 I didn't approve of him.

30 MR. MILLER: Why did you sign it?

1 THE WITNESS: On a specific Board order --
2 I don't recall the Board order, but I can recall one
3 time signing the Minister had said he gave him leave to
4 attend something in Europe.

5 MR. MILLER: This was not the Minister, this
6 was a Board order.

7 THE WITNESS: No, when we signed a Board
8 order, yes.

9 MR. MILLER: That is all the questions
10 I have.

11 THE CHAIRMAN: Have you completed, Mr.
12 Miller?

13 MR. MILLER: Yes.

14 THE CHAIRMAN: Any other members of the
15 Committee that have any questions?

16 MR. MARTEL: I have one question I would
17 like to ask.

18 During the last Hearing two weeks ago it
19 was indicated that Mr. Johnston, it was illegal for Mr.
20 Johnston really to be signing this Board order, that he
21 was not really a member of the Board and that on Mr.
22 Cauley's resignation it only left one person to sign the
23 Board order and I direct my question to the counsel that
24 if he has had an opportunity to review that when he went
25 over what was stated at the preceding Hearings to deter-
26 mine in fact if that is correct, that Mr. Johnston was
27 not really capable of signing the order signed by he and
28 Mr. Legge?

29 MR. DONNELLY: With respect, I was aware
30 that this issue would arise and I think the Board members

1 have prepared some kind of a chart that shows the con-
2 tinuity by the members of the Board from time to time
3 and I would prefer before passing an opinion that I was
4 sure that all the facts were before me. I am sure you
5 wouldn't want to write your report at this time and,
6 similarly, I would be hesitant to pass an opinion on that
7 point.

8 I am aware the point does exist and an
9 interesting point that is correlated to this is the
10 actual effect of retirement as I suppose the
11 Order in Council which was in January of 1970 which was
12 some time after the actual Board order which was in
13 September of 1970. But for the moment I think I would
14 have to hear the rest of the evidence before I gave an
15 opinion on that, sir.

16 MR. MARTEL: We will get an opinion on
17 that before it is all finished then, Mr. Donnelly.

18 MR. GOOD: Mr. Chairman, the Order in
19 was
Council/in January of 1970 but the Board order was
20 actually made May the 8th of 1969.

21 MR. DONNELLY: Did I say September?
22 Excuse me, I meant May the 8th.

23 MR. MILLER: I was just trying to answer
24 Mr. Martel's question. Mr. Martel, I also looked that
25 up and if I read the Act correctly, if someone is absent
26 due to illness then a pro tem person may be sitting
27 in his place and this would seem to be the action that
28 followed at that point.

29 MR. MARTEL: Yes, I understand he can tal
30 hearings. I am just wondering about his ability as some

1 who would sign the legal document?

2 THE CHAIRMAN: I think Mr. Donnelly has
3 satisfied us that it will be cleared up at some point.

4 Have all members and Committee members
5 concluded their questions of this witness?

6 MR. DEANS: I would ask Mr. Cauley one
7 question.

8 I am sorry to keep coming back, but things
9 keep coming up from time to time.

10 Mr. Cauley, you have often made the state-
11 ment that you attended and shared the vast majority of
12 the meetings of the Board hearing claims?

13 THE WITNESS: Yes.

14 MR. DEANS: There will be an Exhibit
15 entered and I'm not going to enter it, but there will be
16 an Exhibit entered and I'm only going to deal with one
17 part of it during the years 1967, 1968 and 1969 ---

18 THE CHAIRMAN: Mr. Deans, may I interrupt
19 you and enter this Exhibit first?

20 MR. DEANS: Yes.

21 THE CHAIRMAN: This is considered Exhibit
22 No. 48 provided by the Workmen's Compensation Board and
23 it is a copy of Board hearings and attendances.

24 MR. DEANS: Thank you.

25 EXHIBIT NO. 48: Board Hearings, Feb. 1/66 to April
26 30/69.

27 MR. DEANS: This is a copy which I will
28 send to you, Mr. Cauley, of the Board hearings held
29 between February 1st, 1966 and April the 30th, 1969 and
30 this is what I asked counsel to obtain from the Workmen's

1 Compensation Board which they provided. Would you agree
2 with the figures that have been provided here or do you
3 believe them to be reasonably accurate?

4 THE WITNESS: I haven't seen them, sir.

5 MR. DEANS: I am going to give them to
6 you. During that period there was 737 hearings, 567
7 of which you attended and 170 of which you missed; 277
8 of which Dr. Steele attended, 43 of which he missed; 406
9 of which Mr. Johnston attended, 11 of which he missed;
10 14 of which Mr. Cross attended, missing none. In those
11 cases, the last three, the one in '67, '68 and '69 and
12 275 that Mr. Legge attended and 462 of which he missed.

13 Would you agree that those figures would
14 be fairly accurate?

15 THE WITNESS: I would think they would be
16 reasonable because, as I have already stated, that unless
17 I was out of town on Board business or on holidays or
18 away ill which, thank God, wasn't too often then I
19 attended the hearings.

20 MR. DEANS: Would you be -- I want to
21 send that to you, sir, so you will see it and I want
22 you to look at it.

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1 THE WITNESS: I think that would be
2 reasonably accurate.

3 MR. DEANS: You would agree then that
4 barring minor changes that you would feel that was an
5 accurate reflection of the numbers of times that you
6 attended hearings and an accurate reflection of the number
7 of times that Mr. Legge attended hearings and the number
8 of times that others attended hearings?

9 THE WITNESS: I would think so. It seems
10 to be in the right percentage because when I will knock
11 out the holiday in here I think would bring my attendance
12 pretty well close to 90%.

13 MR. DEANS: Just one other question.

14 I would be right in saying then that you
15 chaired at least 290 of the meetings that were held of
16 the 737, at least 290?

17 THE WITNESS: Yes, I would think so.
18 That would be right.

19 MR. DEANS: It is conceivable that you
20 could have chaired even more of the meetings because the
21 only meetings that would have been chaired by Mr. Legge
22 were 275 of the 737?

23 THE WITNESS: Yes, that is correct.

24 MR. DEANS: What were the administrative
25 duties of the Chairman? What is the difference between
26 the Chairman's administrative duties and the administrative
27 duties of the Vice-Chairman?

28 THE WITNESS: There is none. There is no
29 difference between the administrative duties of the
30 Chairman or the Commissioner or the man in between. They

15-2

1 are a corporate unit to administer part 1 of the Act
2 and that is both schedules and this is the oath you take
3 this is what the legislation demands of you and I could
4 say, "Oh, forget about that, that is the Chairman's" or
5 "Forget about that, that is the Commissioner's" or anything
6 else. You are equally in there. Now for years there was
7 only a slight differential in salary because the Chairman
8 chairs the meetings but there is no difference in the
9 administrative responsibilities, any of the three.

10 MR. DEANS: There was no function that the
11 Chairman was required to perform in an administrative
12 capacity that he didn't have to consult with the other
13 members of the Board in order to perform?

14 THE WITNESS: No, I think he should have
15 other than going to make a speech someplace, but admini-
16 tratively, you were supposed to consult one with the
17 other to determine what that policy was to be, all equal.

18 THE CHAIRMAN: Counsel, have you any
19 further questions?

20 MR. DONNELLY: One matter you might help
21 us with, sir. Can you give me some idea as to approxi-
22 mately how many appeal hearings the Board would sit on prior
23 to 1965, say, in the space of a year?

24 THE WITNESS: The system was different
25 so it would be just like comparing horses and rabbits.

26 MR. DONNELLY: Under the old system the
27 whatever the system was.

28 THE WITNESS: The old system, you see,
29 you could determine the claims department, the
30 instructions to the claims department that they were

1 to make a decision unless they were as certain as possible
2 that all of the facts necessary to determine that workman's
3 rights were there. Now, if there was some doubt and they
4 weren't sure, it went automatically to a group of three
5 more senior ones and then it would start -- if we had
6 70 hearings in a year prior to 1965 it would be an
7 exceptionally busy year. Now that wouldn't mean that the
8 Board wouldn't handle more claims than that because when
9 the Review Committee couldn't come to a unanimous decision
10 it automatically came to the Board.

11 Q. I was just speaking of the actual
12 hearings and you say 70 would be a busy year?

13 A. This wouldn't be a true picture,
14 this is what I was trying to say, if we did 70, because
15 it is entirely different.

16 MR. DONNELLY: Mr. Chairman, I have no
17 further questions; thank you.

18 THE CHAIRMAN: Mr. Counsel, have you
19 completed with this witness?

20 MR. DONNELLY: Yes; thank you.

21 MR. HUMPHREY: Mr. Chairman, before we
22 take our leave, is it my understanding that I will have
23 no right or Mr. Lapkin in my stead to cross-examine any
24 of the witnesses except by way of presenting questions
25 to Commission Counsel?

26 THE CHAIRMAN: That is correct.

27 MR. HUMPHREY: What is the status?

28 Shall I discuss that after the recess
29 with Commission Counsel because he is anxious to get
30 away and if we can arrange some way to allow him to go

15-4

1 and come back on call?

2 MR. DONNELLY: That is a decision I would
3 prefer not to have as my responsibility. I understand
4 the Commission may want him but the decision can't be
5 made at this moment pending any other evidence. But I
6 guess the question is, can he be accommodated to be
7 excused to a week from Friday.

8 THE WITNESS: No, until tomorrow or after
9 tomorrow if I can be excused for the week but I mean
10 tomorrow I will be available.

11 THE CHAIRMAN: Are you available tomorrow
12 and Thursday?

13 MR. HUMPHREY: Perhaps we will stay in
14 attendance this evening and tomorrow and then we can
15 review it at that time.

16 THE WITNESS: This evening too.

17 MR. HUMPHREY: We will be here this evening.

18 MR. DONNELLY: Thank you very much, Mr. Chairman.

19 THE CHAIRMAN: Thank you, Mr. Cauley.

20 MR. DONNELLY: I could carry right on with
21 it your procedure to have a break?

22 Mr. Ross Carter, please?

23 If I may explain, Mr. Chairman, Mr. Carter
24 is called to prove the original affidavit which is on
25 file in the Court office and he has brought the original
26 certified copy and you may or may not wish to have him
27 sworn for that purpose. He is just here for the production
28 of the original affidavit.

29 THE CHAIRMAN: I don't think it's necessary
30 to swear him.

5-5

1

MR. DONNELLY: Thank you.

2

3

Mr. Carter produces a certified copy of
Court record in the case of Campbell and the Compensation

4

Board. May I tender that as an exhibit please?

5

6

The original documents are also in his
file if anyone wishes to see them.

7

THE CHAIRMAN: This is Exhibit No. 49.

8

EXHIBIT NO. 49: Certified copy of the Court record in
the case of Campbell and the Compensation
Board.

9

10

MR. DONNELLY: Mr. Hollingworth?

11

THE CHAIRMAN: (Swears the witness)

12

13

JOHN JACKSON HOLLINGWORTH, Sworn:

14

15

MR. DONNELLY: If I may also introduce to
the Committee the counsel appearing now for Mr. Hollingworth,
Mr. A. M. Austin.

16

17

18

Q. Mr. Hollingworth, you have been sworn,
sir?

19

A. I am, sir.

20

21

Q. Now you are a Public Relations Officer
and the Manager of the Public Service and Information
Department with the Compensation Board, are you?

22

23

A. That is correct.

24

25

Q. Do you understand, sir, that you are
subpoenaed and called in connection with the affidavit
taken in the Campbell action in 1965 relevant to certain
payments made by the Board?

26

27

28

A. I do.

29

30

Q. I don't wish to question the background
of the picture and I think the members generally know it

15-6

1 and I don't want to get into the action itself but
2 generally was the background this, sir, that pictures
3 were ordered and that a second order was placed with a
4 different photographer and eventually a dispute arose
5 and got into the Courts over whether the Board or
6 Mr. Cauley should pay for that second group of pictures.

7 A. I will give you this general outline

8 I have certainly always had in the
9 Public Relations Department a reasonable number, probably
10 half a dozen, say, five by seven glossy prints of all
11 the three Board members as well as the principal people
12 of the Board which are necessary for publicity purposes
13 from time to time. As well, we do have framed portraits
14 of all the Board members, all three, in the six district
15 offices and the five chest examining stations of the
16 Board as well as the rehabilitation centre, that is two
17 in all. Therefore, on the appointment of Mr. Legge,
18 shortly after he became busy down in the Board in the autumn
19 of 1965, it was my thought that he should have a picture
20 taken for these purposes. He didn't have one. At the
21 same time, I thought it would be just as well to update
22 the other two Board members whose photographs had been
23 taken several years prior to that and I thought were
24 somewhat outdated. Therefore, arrangements were made
25 to bring a photographer down to the Board and, as I say,
26 shoot the three Board members for photographing purposes
27 and this was done.

28 Now when the proofs were returned, and
29 sir, I specifically wanted head and shoulders, typical
30 public relations shots, no fancy poses of any kind and

5-7 1 this was done in the first instance and the proofs of
2 both Mr. Legge and Dr. Steele were okay with them and I
3 agreed that there was a particular pose that was proper
4 for our purposes, however, Mr. Cauley didn't like his and
5 I must agree that Mr. Cauley's photograph or his proof
6 really wasn't very good. He suggested that he had a
7 glossy print that he would bring down to me that would
8 suffice. He brought it down but I personally wasn't
9 too happy with it because I thought it predated the
10 photographs we were already using.

11 Then it was suggested to him that
12 perhaps he would like to have a photographer of his own
13 choice and at this point he suggested Mr. Gerry Campbell.
14 Again, sir, it is sometimes difficult from memory going
15 back some seven years but in making the appointment with
16 Mr. Campbell, as I recall, I think I phoned Mr. Campbell
17 from Mr. Cauley's office to make the appointment and at
18 the same time described the type of pose that I wanted,
19 strictly head and shoulders and nothing else. When the
20 proofs came back there were, to my surprise, a number of
21 poses with glasses over the back of the chair and
22 spectacles and a variety of poses that certainly I hadn't
23 asked for. But in any case, there was one pose, as I
24 recall it, it was hanging over the back of a chair but
25 by cropping the photograph just about here (indicating)
26 we could cut the hands off and it would therefore suffice.

27 Q. You indicate that the photograph
28 would be used by cutting part of it off?

29 A. That is correct, sir. Thereby
30 remaining strictly the head and shoulders, the part required

15-8

1 initially.

2 So having agreed on this particular pose,
3 it was then my idea to order these from Mr. Campbell and
4 by coincidence, on the day that I was about to order, a
5 my order would be for 12 eight by ten matte finish, as
6 well as 6 five by seven glossy. On the day that I was
7 going to order these from Mr. Campbell, Miss Bancroft
8 came to me with a notebook and said that Mr. Cauley
9 wanted the following photographs ordered and indeed there
10 was a great number in a variety of sizes and different
11 poses. It was surprising to me but nevertheless it was
12 a directive from the Vice-Chairman of the Board so I
13 included this in a letter of April 2nd, 1965, to
14 Mr. Gerald Campbell.

15 Q. Is that letter available, sir?

16 A. Yes, sir, it is.

17 Q. I had a copy. The original is there?

18 A. My original copy is here, yes.

19 It was shortly after sending this letter
20 that Mr. Campbell phoned me and I must admit it was a
21 scrambled order, as I indicated in my letter, because
22 there were so many different sizes and poses and he
23 wanted to confirm with me exactly what I wanted for my
24 purposes because I set out in the initial paragraph where
25 for his use or my own use, would you please send the
26 following. So, having described to Mr. Campbell what
27 I wanted and though I said in my letter, all to be
28 unmounted, Mr. Campbell suggested to me that if the
29 balance was for Mr. Cauley then they should be mounted
30 because he would probably want them to be framed. Now,

-9 1 on my own, I said, "If that is the case, okay, go ahead
2 and do it but make them up in matte finish. This order
3 did come in and they were delivered to Mr. Cauley's office
4 and in two or three or four boxes, I am not too sure,
5 and Mr. Cauley followed me around and in a jocular
6 fashion said, "What am I going to do with all these
7 photographs?" I said, "Really I am not too sure. You
8 ordered them." I think I made a joke at the time, he
9 was maybe going to autograph them and send them to the
10 Hamilton Tigercats because he was a great fan of that
11 football team.

12 I don't recall any further conversation
13 at that point except that returning to my office there
14 were no photographs delivered to me and it was probably
15 the next day when they hadn't come in and I supposed then
16 that mine were entered in the overall order and I went
17 to Mr. Cauley's office and I think he was absent at the
18 time and Miss Bancroft and I looked through and I couldn't
19 find my order and Miss Bancroft said to me that Mr. Cauley
20 had taken home one package to have a look at them and
21 perhaps mine was in that and, in fact, I think they were
22 because they were subsequently returned to Head Office
23 and I recovered my order and had them sent out to
24 Mr. Sloan, the initial photographer, for framing.

25 There was a bit of a mix-up here because
26 on the one hand we had one photographer doing the job
27 of two of the Board members and he wanted the second
28 photographer to as closely align his photographic
29 skills with the first and then the first photographer,
30 Mr. Sloan, was going to do the framing and so then it
was a matter of mounting as well.

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In this area, and I am a little bit hazy here, but when the 8" by 10" photographs came back from Mr. Campbell they were either signed by him or mounted with a signature on it which made it somewhat different than the order from the first photographer so I had to go and see him to get him to change this. However, in the meantime -- I am getting a little ahead of myself here because on completion of the order and the arrival of all of the photographs back at head office then an invoice arrived from Mr. Campbell and it was I felt to be a rather exhorbitant amount. It was certainly in excess of \$1,000 and I am not sure exactly what it was today, but it was in excess of \$1,000 and certainly I wouldn't approve it at a departmental level for what I felt to be a particularly high amount and I referred it to Mr. MacDonald who at that time was treasurer and principal officer of the Board and apparently in due course it came to Mr. Legge's attention and subsequent both Miss Bancroft and I appeared before the Board to discuss the events leading up to this incident.

It was shortly after that again that Mr. Campbell I believe telephoned me to say to hold up on the payment of his bill. When I went to see him in early summer and it was at that time that I asked him to then give me another 12-8" by 10" matte finish photographs because of the original order coming in with his signature on it and therefore not useable and I told him again the number of photographs that I wanted and I felt that we should only be charged for this and subsequently I received an invoice from him

1 it was paid in July.

2 Now I am not aware of what the financial
3 arrangements were between himself and Mr. Cauley for
4 the Board after that.

5 Q. What was the amount of the payment
6 that the Board made at that time, do you know?

7 A. It was \$312.37.

8 Now I presumed that the balance of the
9 large amount of money was going to be charged to Mr.
10 Cauley although at that time he was in hospital and
11 I am not just too sure what Mr. Campbell did. That was
12 the last I heard of it until very late fall, early
13 winter; I became aware of the fact that Mr. Campbell
14 was going to bring action against the Board for this
15 outstanding payment. I hadn't realized at this point
16 that the payment was still outstanding and it was at
17 this point that Mr. Eric Lane who was the then Secretary
18 of the Board and solicitor asking of events that took
19 place leading up to the incident in early April and I
20 described to him and that was then set forth in an
21 affidavit which I signed.

22 Q. Tell me, sir, there has been some
23 suggestion there may have been some compulsion on you
24 to sign the affidavit. Can you comment on that to the
25 Committee, please?

26 A. Very briefly there was absolutely
27 no compulsion and there was no pressure put on me at
28 any time to sign anything, sir.

29 Q. And also there has been some suggest-
30 ion the contents of the affidavits may not be true, sir.

1 Can you give me any comments on that?

2 A. I have since read over the
3 affidavit which I signed; I hadn't seen it in the last
4 seven years until just these last few days and certainly
5 there is nothing in that that I can see that would
6 change in any way. It seems to be a true picture and
7 story of events that lead up to this particular incident.

8 Q. Can you identify your signature on
9 the original document of the court records, sir?

10 A. That is my signature.

11 MR. DONNELLY: Mr. Chairman, I don't pro-
12 pose filing that original document from the court. With
13 your permission I will simply file the certified copies
14 that were brought just a few moments ago.

15 Q. Sir, the signature on the affidavit
16 appears to have been sworn by Mr. Rest. Are you
17 familiar with him? Do you know who he is?

18 A. Yes. Again I must admit that I
19 wasn't sure who Mr. Rest was. Obviously I did see him.

20 Q. Is there anything further you wish
21 to tell the Committee about the question of any -- fa-
22 ltering the affidavit or any compulsion upon you to
23 sign the document?

24 A. No, I would only reiterate there
25 was no pressure brought to bear in any way for me to
26 sign it.

27 Q. Have you any personal knowledge of
28 the signing of the Bancroft affidavit? If you don't
29 know of your own knowledge I don't want you to tell us.

30 A. No, other than from memory Miss

1 Bancroft signed it and that's about my -- she did sign
2 it, yes.

3 MR. DONNELLY: Maybe some of the other
4 members have questions for you here.

5 MR. DEANS: Mr. Chairman, I recognize that
6 Miss Bancroft is going to be giving testimony, I assume
7 she is, but I do want for the purpose of discussing
8 the affidavits a preference if I may to two affidavits.
9 But I speak first of all to the affidavit signed --
10 Exhibit No. 8, signed by Mr. Hollingworth and I want
11 to ask you, Mr. Hollingworth, are you absolutely sure
12 that everything that you signed in this affidavit was
13 accurate?

14 THE WITNESS: Yes, sir, as accurate as one
15 could recall from a period of time from April through
16 to December.

17 MR. DEANS: And you are prepared to say
18 again then that what is in the Section paragraph 2 and
19 paragraph 3 of this affidavit dealing with the matters
20 to which Miss Bancroft will be able to refer are
21 accurate; and I will read it to you: "Some time during

22 the third week in March, 1965, in
23 my former capacity as Director of
24 Public Relations for Workmen's
25 Compensation Board, I arranged a
26 sitting for the Defendant John
27 Cauley with the Plaintiff..."

28 the Plaintiff being Gerald Campbell, "...for the pur-
29 poses of obtaining standard public
30 relations photographs and unmounted

1 portraits of the said John Cauley
2 for general public relations purposes
3 and for display in various District
4 Offices of the Board.

5 3. Some time after the said appoi-
6 nment, on receipt of the proofs, an
7 order for the prints and portraits
8 which were required by the Board,
9 along with an order for other port-
10 raits which were required by the
11 Defendant John Cauley, was forwarded
12 by me to the Plaintiff in a letter
13 dated April 2nd, 1965."

14 That is correct?

15 THE WITNESS: That is correct, sir. The
16 only area that may not be absolutely correct is some
17 time during the third week of March, 1965 and it's as
18 close as I can recall.

19 MR. DEANS: I wonder if I could let you
20 have a copy of the affidavit signed by Miss Bancroft?

21 THE WITNESS: Yes.

22 MR. DEANS: Do you have a spare copy of
23 that that could be sent over?

24 I want to refer you to the second paragraph
25 in Miss Bancroft's affidavit. She said, "Some time
26 during the month of May 1965 the
27 Defendant John Cauley called me to
28 his office to look over with him
29 certain proofs submitted by the
30 Plaintiff."

1 And the Plaintiff again being John Campbell. "After
2 considering the proofs he gave me
3 the instructions as to how many he
4 wanted printed of each proof.
5 Immediately thereafter I carried the
6 proofs to the desk of Mr. John
7 Hollingworth the then Director of
8 Public Relations for the Defendant
9 Workmen's Compensation Board and I
10 told him how many Mr. Cauley wanted
11 issued of each proof and what size
12 they were to be."

13 Now, I wonder if you would explain to me,
14 sir, how it could be that you could have ordered on
15 April the 2nd the proofs which were not submitted by
16 the affidavit sworn testimony of Miss Bancroft to you
17 until May? How could it be that a letter could be sent
18 by you on April the 2nd ordering prints of proofs which
19 Miss Bancroft states were not brought to your office
20 and to your attention until May of the same year?

21 THE WITNESS: That is a very good question,
22 sir. There is absolutely no doubt that I dictated the
23 letter of April the 2nd, 1965 on April the 2nd, 1965
24 and it was mailed that evening. I can only presume that
25 Miss Bancroft, having recalled the events in December,
26 made a mistake by saying May.

27 MR. DEANS: You say that they definitely
28 were done in April; there is no question at all that the
29 date of April 2nd, 1965 is accurate?

30 THE WITNESS: Absolutely, sir.

1 MR. DEANS: And that everything else in the
2 affidavit is accurate?

3 THE WITNESS: Right, sir.

4 MR. DONNELLY: Would you file that letter
5 please, witness, the April 2nd letter you referred to?

6 THE WITNESS: My original copy, sir?

7 MR. DONNELLY: Please.

8 EXHIBIT NO. 52: Letter from Mr. Hollingworth to
9 Mr. Gerald Campbell, dated Apr. 2/6.

10 THE CHAIRMAN: Any other members have
11 any questions of Mr. Hollingworth?

12 MR. NEWMAN: What were the costs of the
13 pictures you had done for the Chairman?

14 THE WITNESS: That I had done for the
15 Chairman?

16 MR. NEWMAN: That's correct, total cost
17 approximately?

18 THE WITNESS: **The total cost for 12 port-**
19 **raits framed with nonreflecting glass plus six 5" by 7"**
20 **glossy plus 12 more for Dr. Steele, the same kind of ar**
21 **order, in other words, 24 framed and 12 glossy, total**
22 **cost was \$717.33.**

23 EXHIBIT NO. 53: Copy of cancelled cheques from the
24 Workmen's Compensation Board, one to
Edmund Soame for \$717.33, the other
to Gerald Campbell for \$312.37.

25 MR. DEANS: Mr. Hollingworth, I do have
26 another question and I'm awfully sorry.

27 Were you present at the time that Miss
28 Bancroft signed the affidavit?

29 THE WITNESS: No, I was not.
30

1 MR. DEANS: Do you have any knowledge
2 at all or had you any knowledge at the time the affi-
3 davit was signed?

4 THE WITNESS: You mean as to the content
5 of the affidavit?

6 MR. DEANS: The content of her affidavit
7 and your affidavit?

8 THE WITNESS: I could not recall that,
9 Mr. Deans.

10 MR. DEANS: Did you dictate your affidavit?

11 THE WITNESS: No, I did not. I discussed
12 the events with Mr. Lane and the affidavit was shown to
13 me and I was asked if this was a proper presentation
14 written of my recollection.

15 MR. DEANS: Who else was present, sir, at
16 the time you did this?

17 THE WITNESS: At the time I signed this?

18 MR. DEANS: At the time of the dictation
19 of the affidavit or at the telling of the events and
20 the signing of the affidavits?

21 THE WITNESS: I find it difficult to recall,
22 sir. I believe it was just Mr. Lane and myself.

23 MR. DEANS: Where was this done?

24 THE WITNESS: I recall it was in his
25 office and at the head office of the Compensation Board.

26 MR. DEANS: There was no one else present,
27 only two?

28 THE WITNESS: I don't believe there was
29 anymore.

30 THE CHAIRMAN: Mr. Miller?

1 MR. MILLER: I have one question for you
2 Mr. Hollingworth. I am referring to the transcript of
3 April 6th at page 37 when Mr. Cauley said he took you
4 to the Toronto Press Club because you were deeply dis-
5 turbed. You said to him, "Jack, I hope I haven't lost
6 a friend. I was made to do it. The
7 affidavit was completed; I was called
8 in and told, 'you will sign this or
9 or else. What are you worrying
10 about anyway because we now have
11 Cauley out of here!"

12 Is that true?

13 THE WITNESS: No, sir. The reference to
14 "Jack, I hope I haven't lost a friend," is true. My
15 recollection of that particular statement took place
16 about two or three or four days after the time that I
17 was called to appear before the Board, all three Board
18 members as was Miss Bancroft to discuss the event and
19 we passed one another, Mr. Cauley and I, in the hallway
20 just about outside the board room and at that point he
21 said something like, "Don't worry, John, it will all
22 work out," and I said at that time, "I hope I haven't
23 lost a friend." Now he has since repeated this to me on
24 a couple of occasions and certainly we have had lunch
25 at the press club. But at the time I stated that was
26 in the hallway at 90 Harbor Street and there would be
27 no reason for me to say, "You will sign this or else,"
28 and, "What are you worrying about now because we now
29 have Cauley out of here."

30 THE CHAIRMAN: Other members? Mr. Lewis?

1 MR. LEWIS: What did you mean, Mr.
2 Hollingworth, when you said you were called before the
3 Board to discuss this matter?

4 THE WITNESS: The Board's members,
5 obviously, Mr. Lewis, wanted to find out really what
6 occurred to cause this rather large order I would gather
7 and I was invited in to explain my position in it.

8 MR. LEWIS: When was that, sir?

9 THE WITNESS: That would be -- I have to
10 guess a little here -- it would have to be sometime in
11 late April. In any case, it was after the invoice was
12 received from Mr. Campbell.

13 MR. LEWIS: But it preceded by several
14 months the subsequent pending suit?

15 THE WITNESS: Very much so.

16 MR. LEWIS: Who is Mr. Rest?

17 THE WITNESS: Mr. Rest is a solicitor in
18 the Harbour Commission, our nextdoor neighbours.

19 MR. LEWIS: His signature appears on the
20 affidavit? I haven't got the affidavit. Is that correct?

21 THE WITNESS: Yes, it does.

22 MR. LEWIS: But you say when you signed the
23 affidavit you were in the presence of Mr. Lane solely?

24 THE WITNESS: No, I didn't. I said that
25 I gave my account of the particulars leading up to the
26 incident to Mr. Lane who I would suppose put them in
27 legally and asked me if these were correct and I did not
28 sign it in Mr. Lane's presence.

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MR. LEWIS: Did he dictate it in legalit
at that time?
THE WITNESS: I couldn't say.
MR. LEWIS: When did you sign that?
THE WITNESS: On December 2nd, 1965.
MR. LEWIS: Was that a few days after
speaking with Mr. Lane?
THE WITNESS: I would presume it would b
Mr. Lewis.
MR. LEWIS: Was that with Mr. Legge at
the time?
THE WITNESS: I'm sorry, my memory does
funny things but I can recall being in the Harbour
Commissioners Building on two occasions, one was to see
a colleague of mine in Public Relations and the other t
I have to assume is when I went to sign this affidavit.
MR. LEWIS: You went to sign the affidavit
and is Mr. Rest on the affidavit as a witness to it?
THE WITNESS: He was a witness to my
signature, the Commissioner.
MR. DEANS: He swore the affidavit?
MR. LEWIS: He swore it?
THE WITNESS: Yes.
MR. LEWIS: That is the man in whose
presence you signed the affidavit?
THE WITNESS: Right, sir.
MR. LEWIS: One last question, just out
curiosity. Did you use all the pictures?
THE WITNESS: No, sir. Only those that
I ordered.

1 MR. LEWIS: You used them all?

2 THE WITNESS: Yes, I did.

3 MR. LEWIS: The roughly thousand dollars
4 worth of pictures?

5 THE WITNESS: No, I used \$312.37 worth
6 of pictures, sir.

7 MR. LEWIS: I see.

8 THE WITNESS: I'm sorry, no -- right. Yes,
9 in total, it was a total of \$700.00 from Campbell and
10 \$300.00 from Sloan.

11 MR. LEWIS: You used them all in your
12 tenure?

13 THE WITNESS: Yes.

14 MR. LEWIS: Is this an annual thing, the
15 taking of pictures?

16 THE WITNESS: No, not a bit, Mr. Lewis.

17 THE CHAIRMAN: The Board doesn't age or
18 change.

19 THE WITNESS: If the Board were there for
20 half a dozen years then I might take a look at them and
21 say, "Look, fellows, the styles have changed" and then
22 change the pictures. It was six years and this was the
23 reason I wanted to have the pictures changed apart from
24 the fact we had a new Chairman but at that point we were
25 supporting double lapels which are now back whereas the
26 style was a narrow lapel and it was a matter of updating
27 which was convenient at the time of taking Mr. Legge's
28 picture.

29 MR. LEWIS: You would say hopefully neither
30 members nor styles would change too frequently given the

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1 | cost of the photographs?

2 | THE WITNESS: Quite so.

3 | THE CHAIRMAN: Have you completed, Mr. L.

4 | MR. LEWIS: Yes.

5 | THE CHAIRMAN: Mr. Bronson?

6 | MR. BRONSON: Mr Hollingworth, one quest

7 | if I could. Was Mr. Cauley provided with a copy of you

8 | letter of April 7th to Campbell in which you ordered th

9 | pictures because part was for you for the Board's use

10 | and part was for Mr. Cauley's use?

11 | THE WITNESS: I don't believe so.

12 | MR. BRONSON: Would this not be normal

13 | practise if you were doing a letter for the Board or

14 | business for some private person or someone else?

15 | THE WITNESS: Perhaps under the circum-

16 | stances the order was given to me and if perhaps they

17 | may have given me a memo of what I wanted and I would

18 | then have given him a letter. I didn't because I thoug

19 | of it being as an order and I had reason to suspect it

20 | was not.

21 | THE CHAIRMAN: Mr. Lawlor?

22 | MR. LAWLOR: Just a small point, when yo

23 | went over to the Harbour Commission Building to see the

24 | Commissioner, the lawyer in question, were you sent ov

25 | there deliberately?

26 | THE WITNESS: I must admit, sir, that t

27 | particular part of the whole thing is probably the vag

28 | in my mind and I have no reason -- I cannot recall why

29 | Mr. Rest witnessed my signature.

30 | MR. LAWLOR: Mr. Lane is a lawyer, isn'

he?

1 THE CHAIRMAN: Perhaps I can be of some
2 assistance on that but I think a year ago the Rules
3 of Practice in Ontario were such that in a contentious
4 matter the solicitor in the office acting for a party
5 could not swear that party's affidavit. In other words,
6 if I were acting for a client my partner could not swear
7 my client's affidavit and at that time it was necessary
8 to either send your client elsewhere and have his
9 affidavit sworn or bring some other solicitor into your
10 office to sign it. That practice no longer exists.

11 MR. LAWLOR: Did you carry the affidavit
12 with you over there or was it there when you arrived?

13 THE WITNESS: I'm sorry, sir, I can't
14 recall that.

15 MR. LAWLOR: Were both you and Miss Bancroft
16 together when you appeared before the Board or did you
17 appear separately?

18 THE WITNESS: We went in separately.

19 MR. LAWLOR: What was the upshot of the
20 thing? Did Mr. Cauley accept the responsibility for the
21 pictures?

22 THE WITNESS: I have no idea of what the
23 upshot was, sir, I wasn't advised.

24 MR. LAWLOR: Thank you.

25 THE CHAIRMAN: Have all the other members
26 completed their questioning?

27 We will revert back to Committee members
28 then.

29 Mr. Good?

30 MR. GOOD: Was this a customary practise

17-5

1 for you to order anything or with other matters of the
2 Workmen's Compensation Board would be ordered along, ha
3 it ever been done before?

4 THE WITNESS: It might have, sir. It wa
5 purchasing. In our particular area here, if a Board
6 member would say, "Would you get one for me?", yes, I
7 will get one, although I can't recall really having don
8 it before.

9 MR. GOOD: A Board member had never orde
10 photographs along with yours?

11 THE WITNESS: I can't say they never hav
12 sir. It would not be uncommon to say, "Well that's a
13 pretty good shot and could I have an extra one, please
14 order another one for me."

15 MR. GOOD: This is what I understand bu
16 the fact that it was for twice as many would be going
17 personal use than for Board use, did that not occur as
18 an unusual thing?

19 THE WITNESS: Very definitely an unusua
20 situation, yes.

21 MR. GOOD: Not unusual enough that you
22 would check it back with Mr. Cauley?

23 THE WITNESS: Not when his personal
24 secretary came to me on that very day and said, "This
25 what Mr. Cauley wants." This was his private secretar
26 and I felt the rapport between them was enough.

27 MR. GOOD: Did you have any misapprehen
28 about ordering in that quantity for him?

29 THE WITNESS: Not really. I know I act
30 surprised.

1 THE CHAIRMAN: That seems to be all the
2 questioning, Mr. Counsel.

3 Are those all that you had?

4 MR. AUSTIN: Mr. Chairman, I have one
5 matter I would like to clear up with the witness.

6 THE WITNESS: Mr. Austin points out that
7 I might not have been clear on the amount of money,
8 \$717.33. It did include framing of all three portraits,
9 all three portraits with nonreflecting glass.

10 MR. GOOD: And the taking of two.

11 MR. DONNELLY: Thank you very much.

12 MR. DEANS: I just want to be clear on
13 Item 4 of the affidavit. The order contained in the
14 letter was in fact two orders. You had combined them
15 into one for the purpose of ordering, is that true?
16 There weren't in fact two orders of any kind or any
17 division of the orders or any indication of division of
18 the orders, nothing like that?

19 THE WITNESS: No, there was not. At that
20 point I would admit somewhat to some inefficiency.

21 MR. DEANS: Why then would Mr. Campbell
22 call you and ask if the order was for Mr. Cauley's own
23 use? He called and said, "Two days after the letter

24 was forwarded, I received a telephone
25 call from Gerald J. Campbell personally.
26 He asked if the additional order was for
27 Mr. Cauley's own use and I informed him
28 that it was."

29 What additional orders are you referring to if in fact
30 there was only one order?

17-7

1 THE WITNESS: I think he was probably
2 trying to sort the order out because my letter did stat
3 for Mr. Cauley's use and my own use I would like to ord
4 the following, and it was at this point that he wanted
5 me to be specific on what did the Chairman want and wha
6 did Cauley want.

7 MR. DEANS: I see.

8 THE WITNESS: In the one letter there
9 were two orders combined.

10 MR. DEANS: There wasn't anything in the
11 letter other than to say it was for two different peopl

12 THE WITNESS: Other than to say it was
13 for two different people.

14 MR. DEANS: Thank you.

15 THE CHAIRMAN: Are there any more quest

16 MR. HUMPHREY: May I put questions thro
17 the Commission Counsel?

18 THE CHAIRMAN: Yes.

19 MR. DONNELLY: Witness, Exhibit No. 1 i
20 this proceeding is a letter from Mr. Campbell addresse
21 to Mr. E. M. Lane. Do you have a copy of that, sir?

22 THE WITNESS: Yes, I believe I do, sir.
23 Yes, I do.

24 MR. DONNELLY: And it bears the date
25 August 17th, 1965 and with Mr. Campbell's stationery
26 and it says this: "In reply to your letter and our
27 phone conversation of August 17th, I do
28 not wish to endanger Mr. Cauley's heal
29 in any way regarding this account, howe
30 I feel that I should point out that th

-8

1 firm has always been under the impression
2 that the order came from the Workmen's
3 Compensation Board."

4 Do you see that portion of the letter, sir?

5 A. I do, sir.

6 Q. I have been instructed to ask if
7 in fact it was made clear to Mr. Campbell that there was
8 a dual order of the Board and something for Mr. Cauley's
9 own use, how is it that Mr. Campbell used that phraseology,
10 that it was his impression that the order came from the
11 Workmen's Compensation Board?

12 A. Well it is rather surprising inasmuch
13 as his letter of August 18th, 1965, he had prior to that
14 separated the orders and invoiced the Board in the amount
15 of \$312.37 and received payment by cheque on July 14th.

16 Q. Are copies of those documents
17 available?

18 A. No, not a copy of the invoice. I
19 have a copy of the Board's cheque.

20 MR. DONNELLY: I wonder if they could be
21 filed, witness, please.

22 Witness, please, my understanding is that
23 if photographs did go to Mr. Cauley's home and they were
24 sent by parcel post, and I think in the last Hearing
25 Mr. Cauley gave evidence to the effect that I think he
26 met the postman or something to that effect and on
27 realizing that they were photographs he refused to accept
28 them and those photo's were then sent back to the Board.
29 Have you any knowledge of that, sir?

30 THE WITNESS: Hazy, in fact practically

17-9

1 none. I have read the transcript and I recognize that
2 Mr. Cauley stated this. I can't recall -- they weren't
3 sent back to me and I can't recall any circumstances
4 or anyone of the Board saying, "Here are the photographs"

5 MR. DONNELLY: Do you have any recollection
6 at all of the photographs being packaged up and sent to
7 Mr. Cauley or being returned to the Board?

8 THE WITNESS: No, I do not, sir.

9 MR. DONNELLY: Do you know what eventual
10 disposition was made of those photographs that Mr. Cauley
11 was said to have ordered?

12 THE WITNESS: No.

13 MR. DONNELLY: Do you know what happened
14 to them, sir?

15 THE WITNESS: I am trying to recall what
16 might have happened and I'm sorry, sir, I do not know
17 what happened to the photographs.

18 MR. DONNELLY: Do you know where they
19 are now?

20 THE WITNESS: No, I do not.

21 MR. DONNELLY: Was any use ever made of
22 those photographs by the Board?

23 THE WITNESS: No, I'm sorry. There are
24 about six, I believe, photographs of Mr. Cauley. I have
25 them I believe in the credenza but I don't know how I
26 got them.

27 MR. DONNELLY: What is a credenza?

28 THE WITNESS: It is a little sideboard
29 sort of thing.

30 MR. DONNELLY: Is this in your office?

10 1 where?

2 THE WITNESS: In my office.

3 MR. DONNELLY: You say of the ones
4 Mr. Cauley ordered, they are in there you think?

5 THE WITNESS: I think they probably belong
6 to him because they are mounted in such a way that I
7 wouldn't require them.

8 MR. DONNELLY: Can you give us any further
9 assistance as to the disposition of any of those
10 photographs?

11 THE WITNESS: I'm sorry, because they
12 were sent back and if they were sent to me and frankly
13 I don't know why I have these -- I would guess about
14 six -- I don't know what happened to the rest of them.
15 I don't know anything about them being sent home to
16 Mr. Cauley and I don't recall them being sent back.

17 MR. DONNELLY: Do you have any recollection
18 as to how you came to gain possession of the six?

19 THE WITNESS: No, I don't.

20 MR. DEANS: Mr. Hollingworth, I wonder,
21 did you, when you received this rather large bill,
22 knowing in your mind that Mr. Cauley had ordered
23 sufficient number of portraits to be sent out, did you
24 then take the portion of the bill that belonged to
25 Mr. Cauley to Mr. Cauley with the photographs to get
26 a cheque so that you could mail the bill?

27 THE WITNESS: No, I did not, sir, and
28 here again I am not sure whether it came in in one amount
29 or whether it came in listing how much each of the
30 various photographs and poses and sizes were for. I

17-11

1 am not sure whether it was listed like the 40 odd photo
2 graphs, if they were individually listed or if it said
3 the photographs were X number of dollars.

4 MR. DEANS: Did you say you do not have
5 a copy of the invoice?

6 THE WITNESS: I do not, sir.

7 MR. DEANS: Would you have a copy of
8 the invoice for us at some point or could we get a copy
9 of that invoice?

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1 MR. DONNELLY: Has the Board made a
2 search of its records to find that invoice?

3 MR. AUSTIN: That invoice has disappeared.
4 We made a complete search, an exhaustive search.

5 THE CHAIRMAN: Could it be obtained?

6 MR. DEANS: In order to receive payment
7 from the Board for the \$312.37 there must have been
8 something sent through the records of the accounting
9 department I would assume; is that correct?

10 THE WITNESS: That's right, sir.

11 MR. DEANS: They wouldn't have only one
12 invoice and no duplicate copy for accounting purposes?

13 THE WITNESS: I am not exactly sure of
14 all the accounting practices. I believe we would pay
15 to the original invoice and this was sent to me after
16 my discussion with Mr. Campbell in the very early summer.

17 MR. DEANS: You saw the invoice?

18 THE WITNESS: Yes, sir.

19 MR. DEANS: You don't recall whether it
20 was a total sum or whether it was broken down?

21 THE WITNESS: I think in the second
22 invoice it was a total sum.

23 MR. DEANS: How did you arrive at the
24 \$723.37, how would you check the number?

25 THE WITNESS: I am sorry, Mr. Deans, it
26 was a break down on Mr. Campbell's part as to how much
27 we owed him for the photographic services that I
28 required. This was his and perhaps that includes tax,
29 I am not sure.

30 MR. DEANS: Assuming Mr. Cauley did order

18/2

1 them and I don't know whether he did or not, but
2 assuming he did, how would you normally have paid for
3 something like this? Would the Board have paid it and
4 recovered from Mr. Cauley by cheque in order that their
5 bookkeeping record and their invoicing records would
6 match for accounting purposes, or would they have somehow
7 cut a piece off and sent it to Mr. Cauley? How would you
8 go about doing this thing, you order something as large
9 as this such as a sum of money to be paid out.

10 THE WITNESS: As I said a little bit
11 earlier, because of certain business pressure I was under
12 at the time my letter to Mr. Campbell was not too good,
13 although certainly it was for the two orders. Now in
14 retrospect I could say, "Fine, I didn't list two specific
15 orders" even though it was the intent and therefore upon
16 the receipt of the invoice and perhaps I thought at the
17 time, but I can't recall, that I will have to get Mr.
18 Campbell to send in another invoice. It wasn't paramount
19 on my mind on that time.

20 MR. DEANS: Did you tell Mr. Cauley at
21 that time you thought the bill was excessive?

22 THE WITNESS: I don't recall whether I did
23 or not.

24 MR. DEANS: You mentioned earlier you
25 thought the bill was rather large?

26 THE WITNESS: Yes.

27 MR. DEANS: Did you think the portion of
28 Mr. Cauley's was large in addition to the Board's
29 photographs?

30 THE WITNESS: I can't recall whether, or

1 shown there was the Board's portion and Mr. Cauley's
2 portion. I can only recall that it was an extremely
3 large amount and in total, so I would think even on a
4 portion of it was even more expensive than it should
5 have been.

6 MR. DEANS: But you didn't bring this to
7 Mr. Cauley's attention that you can recall?

8 THE WITNESS: No.

9 MR. MILLER: Mr. Chairman, could I ask a
10 question?

11 THE CHAIRMAN: Mr. Newman?

12 MR. NEWMAN: Mr. Hollingworth, maybe I
13 didn't understand you correctly but when the original
14 bill came through, Mr. Campbell said on one of the
15 Exhibits he thought it was a Board order. Did you not go back
16 because Mr. Campbell's name was not on the original
17 and because you didn't like them?

18 THE WITNESS: You said a Board order,
19 order from the Board.

20 MR. NEWMAN: Order from the Board.

21 My point is this: you went back and re-
22 ordered the picture from Mr. Campbell without his name
23 on them and the amount of \$312.37, was that for that
24 amount, the extra ones you ordered yourself, is that why
25 there is a separate invoice for those or not?

26 THE WITNESS: Yes, that would be for the
27 twelve 8 x 10 matte finishes and six 5 x 7 glossies.

28 MR. NEWMAN: These are ones subsequently
29 you ordered yourself to suit your purposes because the
30 others had Mr. Campbell's name on it, nothing to do with

18/4

1 the original invoice of over \$1,000.00?

2 THE WITNESS: Mr. Campbell had to redo
3 that portion of my original order for me because they
4 were not suitable for framing in the first place, so
5 he had to redo it again.

6 MR. NEWMAN: The cost of redoing it was
7 \$312.37?

8 THE WITNESS: No, I believe he redid it --
9 the original cost would have been \$312.37 but because
10 he didn't fulfill my order correctly he did them again
11 I believe at no additional cost. So presumably this
12 \$312.37 is total cost.

13 MR. MILLER: Two questions, Mr. Chairman:
14 first, would you not have normally issued a formal
15 purchase order for procurement? Is it your duty in
16 other words to place an order?

17 THE WITNESS: It is my duty to place an
18 order, sir. At that time, purchase dates are the order
19 of the day but seven years it was not. It is not uncomm
20 for the director of P.R. to order something like this by
21 letter.

22 MR. MILLER: Secondly, if in fact you wer
23 placing an order which in your mind was for two accounts
24 should you not have instructed the supplier of this
25 fact?

26 THE WITNESS: As I said, I did it in a
27 very general way, sir, saying that for Mr. Cauley's use
28 and my use I wanted it, and again I would say for a
29 third time I would admit inefficiency in not being more
30 specific in this area. But then it was pointed out by

1 telephone on receipt of that letter shortly after.

2 MR. MILLER: The last question is, who
3 eventually paid for all of these?

4 THE WITNESS: I don't know.

5 THE CHAIRMAN: Mr. Lewis, one last
6 question.

7 MR. LEWIS: Mr. Chairman, Mr. Hollingworth
8 threw into a reply what appeared to be a considered
9 phrase, "Certain business pressures I was under at the
10 time", I understand caused him to not write as lucid
11 or careful a letter as he might have written. What are
12 these certain business pressures you were under at the
13 time?

14 THE WITNESS: As I recall I had my finger
15 in about half a dozen different projects. It was a
16 matter -- perhaps it was poor phraseology on my part,
17 Mr. Lewis, but I was a terribly busy man at the time,
18 that's all.

19 MR. LEWIS: In the public relations
20 field for the Board?

21 THE WITNESS: Yes.

22 THE CHAIRMAN: Just before we adjourn for
23 the supper hour I wanted to read for the benefit of the
24 record these Exhibits. Exhibit No. 50, an order of the
25 Board accepting the resignation of Dr. E. C. Steele;
26 Exhibit No. 51, Board Hearing Appeals, 1968, January 1
27 to April 30th, 1969; Exhibit No. 52, letter to Gerald
28 Campbell from the Public Relations Director of the
29 Workmen's Compensation Board; Exhibit No. 53, photostatic
30 copies of cheques paid by the Workmen's Compensation

18/6

- 1 Board to Edmund Soame in the amount of \$717.33 and
2 to Gerald Campbell, Master of Photography, \$312. 37.
3 ---EXHIBIT NO. 50: An order of the Board accepting the
4 ---EXHIBIT NO. 51: Board Hearing Appeals, 1968, January
5 1 to April 30th, 1969.

6 THE CHAIRMAN: We will adjourn until
7 8:00 this evening.

8 --- Upon adjourning at 6:00 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

(WORKMEN'S COMPENSATION BOARD)

Tuesday, April 18, 1972

Evening sitting

19/1

1 --- Upon resuming at 8:00 p.m.

2 THE CHAIRMAN: Gentlemen, we will call this
3 meeting to order. Counsel, are you prepared to call your
4 next witness?

5 MR. DONNELLY: I take it, sir, the witness
6 Hollingworth has been excused?

7 THE CHAIRMAN: I may check this with the
8 Committee.

9 Is the Committee through with the last
10 witness, Mr. Hollingworth?

11 Proceed with the next witness.

12 MR. NEWMAN: Just one question.

13 THE CHAIRMAN: Mr. Newman, you had one
14 question of Mr. Hollingworth?

15 MR. NEWMAN: Why was not/^{an} invoice sent to
16 Mr. Cauley, for the pictures that were sent to him?

17 THE WITNESS: I don't know/^{why} the invoice was
18 sent to him, sir. I suggested to Mr. Campbell that the
19 portion of the pictures that belonged -- that I ordered
20 be sent to me, and the balance be sent to Mr. Cauley.
21 Whether this was done or not I do not know.

22 THE CHAIRMAN: Are there any other question
23 of Mr. Hollingworth from the Committee other than the
24 Legislative members?

25 The Committee have no further questions,
26 Mr. Hollingworth.

27 MR. DONNELLY: Miss Bancroft, please.

28 Mr. Chairman, may I now introduce Mr. C. E.
29 Walden, Q.C., who appears with Miss Bancroft.

30 FLORENCE BANCROFT, sworn:

1 EXAMINATION BY MR. DONNELLY:

2 Q. Now, Miss Bancroft, your full name
3 is Florence Marjorie Bancroft; is that correct?

4 A. That's right.

5 Q. And are you presently living at
6 Oakville?

7 A. That's right.

8 Q. Are you still an employee of the
9 Workmen's Compensation Board, Miss Bancroft?

10 A. I am still on sick leave.

11 Q. And you continue?

12 A. I think my retirement comes up about
13 the middle of May.

14 Q. May of 1972?

15 A. Of this year.

16 Q. How many years have you been with
17 the Board?

18 A. Forty-two.

19 Q. And of recent times what has your
20 capacity there been? What was your employment there?

21 A. Administrative Assistant.

22 Q. For how long did you hold that
23 position?

24 A. Since about December in the fall of
25 1955.

26 Q. Now you were present at the
27 Committee room this afternoon; is that correct?

28 A. Yes.

29 Q. And you heard Mr. Hollingworth gave
30 evidence relative to these pictures of Mr. Cauley?

19/3

1 A. That's right.

2 Q. Could you tell us at the time this
3 incident started what was your employment then?

4 A. I was with Mr. Cauley.

5 Q. In what capacity?

6 A. As a secretary I was classed.

7 Q. Do you recall when it was first
8 that you heard about this particular incident?

9 A. You mean when the pictures were
10 ordered?

11 Q. The start of the business about the
12 pictures.

13 A. As far as I can recall it was some
14 time in May. Now it could have been earlier but the
15 question didn't come up until the fall of 1965.

16 Q. And you say in the fall of 1965
17 your recollection took you back to you think May but
18 perhaps earlier?

19 A. It was some time around the early
20 spring, some time in May I thought of early 1965.

21 Q. What do you recall about the time
22 of the order?

23 A. That Mr. Cauley called me in and
24 asked me to order finished prints of certain proofs that
25 he had on his desk.

26 Q. Did you see those proofs?

27 A. I saw the proofs and took down what
28 he wanted me to order.

29 Q. Do you have any copy of that record
30 available?

1 A. Yes, I have. It is not a very good
2 thing but it was the only thing that I had to write at
3 the time, and on it I have, "Finished" and then "Standard
4 size, three cut-off, three full of each and three of
5 each in envelope." When I went down to Mr. Cauley to
6 order them, part of this was sort of in my mind that
7 this was what I had to go by and it indicates that I
8 totalled up the number of pictures and I have held this
9 myself because it is the only thing that I have.

10 Q. Is that document in your own
11 handwriting?

12 A. Yes, it is.

13 Q. Is there some notation there with
14 the numbers 9, 12, 16, 14 and 17?

15 A. Those numbers are the numbers of
16 the proofs Mr. Cauley ordered.

17 Q. How many pictures were authorized
18 according to that record?

19 A. I have totalled here 48.

20 Q. A total of 48 pictures?

21 A. Right.

22 Q. What were the instructions that
23 gave rise to those notations to come? Who told you that
24 or who told you get that information?

25 A. Mr. Cauley actually ordered this.

26 Q. How soon after the instruction from
27 him did you make the record that you hold in your hand?

28 A. I went right down and ordered the
29 finished products or finished pictures that he wanted.

30 Q. Did you take the cardboard notation

19/5

1 with you?

2 A. I had it with me, yes.

3 Q. Has it been in your possession since

4 then?

5 A. It has.

6 MR. DONNELLY: May that be filed as an

7 Exhibit with the Committee?

8 THE WITNESS: It certainly can.

9 ---EXHIBIT NO. 54: Cardboard notation made by Miss
Bancroft regarding photographs.

10 MR. DONNELLY: Q. So you took that piece

11 of cardboard down and you gave it to Mr. Hollingworth,

12 is that right?

13 A. That's right.

14 Q. Do you recall what happened after

15 that?

16 A. Well I placed the order with Mr.

17 Hollingworth and then it was sometime later when the

18 pictures arrived in Mr. Cauley's office.

19 Q. Did you see the pictures yourself?

20 A. I saw the pictures.

21 Q. Do you know how they arrived?

22 A. They were in boxes and actually I was

23 quite surprised because they were portraits.

24 Q. When you had ordered this, what did
25 you think you were getting?

26 A. Finished prints.

27 Q. Prints as opposed to portraits?

28 A. Yes, whatever the finished prints

29 involved.

30 Q. Do you remember how many boxes there

1 were?

2 A. That I don't recall, but I know
3 there was at least two or three at that time as far as
4 I can recall.

5 Q. Did you have anything further to do
6 with the pictures themselves then?

7 A. No.

8 Q. There is some question as to whether
9 or not the pictures ever left Mr. Cauley's office. Could
10 you make any comment about that?

11 A. Yes, because I took down at Mr.
12 Cauley's instructions -- I don't know whether it was two
13 boxes or one box -- but it was some down and he asked me
14 to put them in his car.

15 Q. Do you recall when that was done with
16 respect to the arrival of the pictures in his office?

17 A. That I couldn't remember.

18 Q. And after you took the pictures or
19 boxes down to his car, did you have anything further to
20 do with the pictures then?

21 A. No, except that Mr. Hollingworth
22 came back and indicated that he had apparently mixed up
23 what apparently had been ordered directly for the Board's
24 use and we looked through what was left in Mr. Cauley's
25 office and they were not there, so I asked Mr. Cauley
26 if he would bring them back so that John could get what
27 he needed from the pictures. Apparently they weren't
28 the boxes that were sent home.

29 Q. After that request on Mr. Cauley's -- or
30 of yours to Mr. Cauley, what was done? You said, "Bring

1 them back" or do you recall what happened after that, and
2 do you know about that?

3 A. I think I went in and John picked
4 out what he wanted from the boxes.

5 Q. Do you recall what happened after
6 that?

7 A. I don't recall. Nothing was ever
8 mentioned to me about the portraits at all and I was
9 transferred to the Administration Department.

10 Q. Do you recall the date of that
11 transfer?

12 A. No, I don't, but it was some time
13 in the late fall after Mr. Cauley returned from a heart
14 attack because I went on two weeks holiday the first
15 part of June and when I came back Mr. Cauley was away.

16 Q. And after the sequence of events
17 about the pictures being clear in there as you have told
18 us, what next happened about the pictures? What came
19 to your attention next?

20 A. The next thing that happened was
21 I was called up to Dr. Steele's office and Mr. Cauley was
22 there.

23 Q. And Dr. Steele is a Commissioner of
24 the Board, is he?

25 A. That is right, yes.

26 Q. You say Mr. Cauley was there?

27 A. Yes, and it appeared there was
28 some confusion and I was quite surprised about the
29 portraits being produced and I said ---

30 Q. Again portraits as opposed to finish

1 prints?

2 A. Finished prints. So I felt in
3 ordering that if I had conveyed anything to John in
4 our conversation that would give the impression that
5 Mr. Cauley wanted portraits, then I was entirely
6 responsible for any error.

7 Q. That is John Hollingworth you are
8 speaking of?

9 A. That's right, I am sorry.

10 Q. You said if you were giving an
11 erroneous interpretation to Hollingworth.

12 A. That it was my entire responsibility
13 and I was willing to pay the difference to solve the
14 problem.

15 Q. Can you recall what happened next
16 after that?

17 A. After that then the Board Meeting
18 was called and I was called into the Board Meeting and
19 I said exactly the same thing at the Board Meeting.

20 Q. Do you recall who was present at
21 that meeting?

22 A. I can't recall all, Mr. Donnelly,
23 but I know Mr. Legge of course was there and Mr. Cauley
24 was there and Mr. Hollingworth was there, Mr. Eric Lane
25 and I would say, Mr. Johnston and some of the principal
26 officers could have been.

27 Q. You are saying at that meeting
28 you told them exactly the same thing?

29 A. That if I had given John the
30 wrong impression then it was my entire responsibility

1 that the portraits had come forth.

2 Q. Can you tell us what next then
3 happened, Miss Bancroft, after that Board Meeting?

4 A. Statements, Mr. Legge indicated
5 statements and affidavits be taken.

6 Q. What was done about that?

7 A. Well, a statement was taken.

8 Q. By who?

9 A. By Eric Lane.

10 Q. And from you?

11 A. From me, yes.

12 Q. Do you recall that particular
13 circumstance? Do you remember the incident?

14 A. I can remember him taking it, being
15 there and giving a statement but I couldn't recall the
16 statement at the present time.

17 Q. Do you recall anyone else being
18 there besides Mr. Lane?

19 A. Mr. Hollingworth.

20 Q. And you say a statement was given.
21 You don't recall exactly what you said, I take it?

22 A. Well I don't recall at all now,
23 Mr. Donnelly.

24 Q. What is your best recollection of
25 what you told Mr. Lane?

26 A. Well it would be along the same line
27 as exactly what I have told you here.

28 Q. Having told Mr. Lane that, do you
29 recall what next happened?

30 A. I was called in to sign the affidavit

- 1 Q. By whom?
- 2 A. By Mr. Ross.
- 3 Q. I think you have seen the affidavit,
- 4 have you?
- 5 A. Yes.
- 6 Q. You have a copy of it there?
- 7 A. Yes.
- 8 Q. Is it your signature on the
- 9 affidavit?
- 10 A. Yes.
- 11 Q. Did you sign the affidavit in the
- 12 sense of swearing the contents to be true?
- 13 A. I do.
- 14 Q. Did you at the time?
- 15 A. Yes.
- 16 Q. Now did you know Mr. Cross at
- 17 that time?
- 18 A. Yes, I had worked for Mr. Cross for
- 19 over ten years at some time during my experiences with
- 20 the Board.
- 21 Q. Had he been on the Board?
- 22 A. He wasn't at that time I don't
- 23 think.
- 24 Q. And what had his capacity at the
- 25 Board been when you worked for him?
- 26 A. We were working on permanent
- 27 disabilities.
- 28 Q. Was he a solicitor with the Board?
- 29 A. Not when I was working. He was
- 30 working on third party claims.

1 Q. Do you recall the circumstances
2 at the signing of the affidavit?

3 A. Not very much, except that I had
4 to read it over and swear that it was.

5 Q. Did you do this?

6 A. I did read it over.

7 Q. Are you now familiar with the
8 contents of it?

9 A. That's right.

10 Q. And having read it over, what was
11 done, going back to 1965 or December or whenever it wa

12 A. That's right.

13 Q. What did you do having read it
14 over?

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1 Did you find any changes or amendments?

2 A. I didn't find -- it was just the
3 circumstances that happened.

4 Q. Was there anything critical of it
5 that wasn't true or should be changed or anything of
6 that nature?

7 A. No, I didn't.

8 Q. And the affidavit appears to have
9 been sworn because it is signed by both of you; is that
10 the case, that you did swear it to be true?

11 A. Yes.

12 Q. Were the contents true to the best
13 of your knowledge and belief?

14 A. To the best of my knowledge, yes,
15 that is exactly what happened.

16 Q. Now there was some indication that
17 there may have been some element of compulsion or
18 intimidation or something of that nature that resulted
19 in your completing of the affidavit. Have you any
20 comment to make about that for the Committee?

21 A. No, there was none, no compulsion
22 or no force and I was not forced to sign anything. The
23 only thing that bothered me was that after being there
24 for so long that I was terribly embarrassed that I had
25 gotten involved in something like this and especially
26 having to go before someone that hadn't been with the
27 Board very long and it was really embarrassing to me.

28 Q. And who was that?

29 A. And I also felt ---

30 Q. Excuse me, please. You say going

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1 before someone who had not been with the Board very long.
2 Who are you referring to?

3 A. Well, Mr. Lane as a solicitor and
4 then to have this happen and have to appear before and
5 sign an affidavit -- not have to, but go through this
6 ordeal with someone that I had worked with for over
7 ten years and it was embarrassing and very upsetting.

8 Q. Were you ever called upon to pay
9 for this mistake that you offered to pay for?

10 A. No, it was never mentioned to me.

11 Q. Now there has been some question
12 as to whether or not you were hysterical or something
13 of that nature. Could you tell us about that?

14 A. No, I was not. After signing the
15 affidavit I quietly walked all the way down to the
16 elevator and went down to my office on the first floor.

17 Q. What happened after that?

18 A. Well, really I felt quite upset
19 about it that this happened after 39 years of what I
20 had called an absolute clean record with the Board.

21 Q. Whose absolute clean record was
22 that?

23 A. Mine.

24 Q. Yes?

25 A. And it upset me and I thought well,
26 if I was going to continue the rest of the day out I
27 thought maybe if I went up to Dr. Steele he might just
28 give me something that would just keep me going for the
29 rest of the day. But of course when I got up there
30 I am afraid I burst out crying in Dr. Steele's office.

1 and that's all there was to it and he just thought the
2 best thing for me to do was to get out of the for
3 a short while so Helen took me up to her place for a
4 few minutes and a cup of tea.

5 Q. Helen is Helen Dunlop?

6 A. Miss Dunlop, yes.

7 Q. And did the Doctor administer a
8 sedative or anything of that nature?

9 A. Not that I recall, no.

10 Q. You went to Miss Dunlop and had tea
11 and then what?

12 A. Well, I don't remember coming back.

13 Q. Do you mean that day or subsequent
14 to that day?

15 A. And I did lose some afterwards be-
16 cause it really upset me.

17 Q. I have had the Board's records checked
18 to see what your employment record was, Miss Bancroft,
19 and they report to me that, "Miss Bancroft reported ill

20 on the following days: December 3rd
21 to December 17th, 1965, 11 days;
22 December 28th to December 31st, 1965,
23 four days; January 10th to January
24 31st, 1966 16 days; February 9th, 1966
25 1/4 day for medical appointment."

26 A. I would say that is quite correct.

27 Q. Does that sound like it is correct to
28 you?

29 A. Yes.

30 Q. And just simply so the entire record

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1 can be before the Committee it goes on to say, "Miss
2 Bancroft was employed as an Executive
3 Secretary from April 1st 1953, work
4 ing almost entirely with Mr. Cauley
5 until she was promoted to the position
6 of Assistant to the Senior Administrative
7 Officer, Claims Department,
8 effective November 12th, 1965 at which
9 time she was granted a promotional
10 increase."

11 May I file that as an Exhibit?

12 A. Yes.

13 EXHIBIT NO. 55: Excerpt from employment record of
Miss Florence Bancroft.

14 MR. DONNELLY: Q. There was one other
15 thing I wanted to ask you about that. Was that absence
16 tied to this incident or do you recall anything about
17 that, the series of absences through December and
18 January?

19 A. Yes, it was.

20 Q. In what respect was that?

21 A. It just upset me that much, that's
22 all.

23 Q. You say after 39 ---

24 A. The whole situation.

25 Q. Pardon?

26 A. The whole situation.

27 Q. After 39 years of a clean record
28 this was an upsetting experience for you?

29 A. It was a very upsetting experience
30

1 Q. Just before I move on, one of the
2 matters that this Board will be concerned with or
3 Committee will be concerned with is the question of
4 either a falsity to the affidavit or any part of it or
5 any compulsion or intimidation resulting in you signing
6 the document. What do you say about those things?

7 A. I don't agree with that at all.

8 Q. With either of them, either the
9 compulsion or the falsity; is that what you are saying?

10 A. I wasn't compelled to sign it, no;
11 that the affidavit as far as I am concerned and as far
12 as my knowledge goes, the affidavit is a correct one.

13 Q. There is one thing I meant to ask
14 you, Miss Bancroft. Your mother died in what year was it?

15 A. Mother died the end of July of 1963.

16 Q. July the 21st by any chance, do
17 you recall?

18 A. It could have been, or a little bit
19 later than that.

20 Q. Now, there may be other gentlemen
21 that wish to ask you questions if you will wait for just
22 a moment.

23 THE CHAIRMAN: You have completed, Mr.
24 Counsel?

25 MR. DONNELLY: Yes.

26 THE CHAIRMAN: Members of the Committee?
27 Mr. Deans?

28 MR. DEANS: Miss Bancroft, you were here
29 this afternoon when I asked Mr. Hollingworth about the
30 discrepancy in the dates. I assume that in fact you

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1 just didn't recall that it was April?

2 THE WITNESS: This is correct.

3 MR. DEANS: Miss Bancroft, did you know
4 why you were asked to sign the affidavit? Was it
5 explained to you the problem that had arisen over the
6 portraits and the payment of the bills?

7 THE WITNESS: No, I didn't know anything
8 about that at all.

9 MR. DEANS: It was never explained to you
10 the reasons why you were going through this rather formal
11 procedure of signing affidavits against -- in fact
12 witnessing something that had occurred between you and
13 the person for whom you had worked for such a length of
14 time?

15 THE WITNESS: No.

16 MR. DEANS: Didn't it strike you unusual
17 at the time that you would be put in the position of
18 signing a legal document attesting to a working relation-
19 ship, the fact you had ordered something?

20 THE WITNESS: I think the number of pictures
21 that were ordered were in question.

22 MR. DEANS: Did you think it odd at the time
23 Mr. Cauley asked you to order the pictures that he would
24 order so many?

25 THE WITNESS: Well, there is a certain amount
26 of loyalty, but Mr. Cauley called me into his office and
27 apparently as far as I can make out there was some differ-
28 ence about having pictures taken and that's all that I
29 knew about it and Mr. Cauley called me in and asked me to
30 order it and his remark was, "I will show him who is bo-

1 around here."

2 MR. DEANS: When you explained -- I don't
3 dispute for a moment and I don't think anyone does the
4 number of pictures -- but when you explained that you
5 had asked simply for prints and that the error -- rather
6 than being yours or Mr. Cauley's -- was in some other
7 area, whoever had either ordered or unintentionally
8 provided portraits was the person who was primarily to
9 blame for the tremendous cost.

10 What was the reaction -- or did you explain
11 that?

12 THE WITNESS: I did.

13 MR. DEANS: You did I assume from what
14 you said?

15 THE WITNESS: I indicated that, that I
16 ordered the finished prints that Mr. Cauley instructed.

17 MR. DEANS: What was the reaction to that?
18 Was there no understanding apparently of an error having
19 been made?

20 THE WITNESS: Well, I think Mr. Hollingworth
21 indicated that at that time he wondered whether or not
22 Mr. Cauley was going to paper the walls of his bedroom
23 with it and this would indicate ---

24 MR. DEANS: He could have papered the walls
25 of his bedroom with the prints just the same, but the
26 unusually high cost was obviously attributable to the
27 portraits as opposed to the prints. The prints are
28 reasonably inexpensive in comparison to the cost of
29 portraits and I was just wondering if upon explaining
30 that there -- that in fact Mr. Cauley didn't order the

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1 portraits, whether the people who asked for the explan-
2 ation weren't prepared to accept that as being a fact?

3 THE WITNESS: I don't know just exactly
4 how you mean it.

5 MR. DEANS: Well, when you were called in
6 by, as I recall, you said Mr. Lane and other people --
7 I don't recall the names of the others -- but when you
8 were called in and asked about the purchase of the photo-
9 graphs, you recall saying you were called into the office
10 and asked about the purchase; right?

11 THE WITNESS: Yes.

12 MR. DEANS: You were obviously asked or
13 were you asked about the purchase of portraits? Were
14 you asked about the purchase of portraits?

15 THE WITNESS: That I can't remember.

16 MR. DEANS: Can you recall, or you said
17 earlier that in fact you explained pretty well what you
18 have explained to the Committee, that you took down on
19 a piece of cardboard what you wanted, prints, that you
20 took that immediately to Mr. Hollingworth, you gave it
21 to him in that form, not the form on the paper but you
22 told him what you wanted was prints and to the best of
23 your knowledge you didn't order portraits?

24 THE WITNESS: That's right. If I had
25 inferred anything in the conversation that it was my
26 responsibility.

27 MR. DEANS: And to the best of your know-
28 ledge Mr. Cauley never ordered portraits either?

29 THE WITNESS: No. I wouldn't have ordered
30 portraits.

1 MR. DEANS: And you agree then that Mr.
2 Cauley didn't order portraits and to the best of your
3 knowledge and recollection you didn't order the portraits
4 either?

5 THE WITNESS: That's right.

6 MR. DEANS: You ordered prints. And in
7 fact when portraits came you were surprised?

8 THE WITNESS: I was.

9 MR. DEANS: And Mr. Cauley was surprised?

10 THE WITNESS: Well, I don't know about
11 that.

12 MR. DEANS: Well I would take that back
13 then. You were surprised.

14 When you were asked about this unusually
15 large order, this thousand dollars and you said you
16 ordered prints, who did you tell this to, in December
17 when you were called in or perhaps shortly thereafter
18 when the pictures arrived and there became some dis-
19 cussion over the size of the bill? Who first approached
20 you about it?

21 THE WITNESS: The first time I was called
22 up was when I said in Dr. Steele's office with Mr.
23 Cauley and they called me up about the pictures and it
24 was then that I indicated that if in my ordering the
25 pictures that I had inferred or given any agreement or
26 concurred with Mr. Hollingworth that they were to be
27 portraits then it was my responsibility.

28 MR. DEANS: But you didn't believe in
29 fact that you had inferred that they had been portraits,
30 did you?

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1 THE WITNESS: No, I didn't.

2 MR. DEANS: You never did believe that an
3 you still think you ordered prints?

4 THE WITNESS: That's right.

5 MR. DEANS: In actual fact although you
6 offered to pay for it it would have been in your opinio
7 a miscarriage of justice had they insisted on the pay-
8 ment since you really didn't make the mistake even
9 though you would have paid it as a loyal employee, a
10 person who has spent a long time ---

11 THE WITNESS: This is how I felt about it
12 yes.

13 MR. DEANS: I may be putting words in you
14 mouth, but I suspect this and this is why I'm asking
15 you this way.

16 I wanted to ask, after this meeting with
17 Dr. Steele and Mr. Cauley when was the next time this
18 matter was raised that you can remember?

19 THE WITNESS: At the Board meeting and
20 the Board meeting all happened very quickly all togethe
21 sir.

22 MR. DEANS: This was in the spring, was i

23 THE WITNESS: This was in the fall.

24 MR. DEANS: And you were at the Board
25 meeting and you are talking now about the full Board,
26 Mr. Lane, Mr. Cauley and Dr. Steele and other people to

27 THE WITNESS: That's right.

28 MR. DEANS: When you explained this at tl
29 Board meeting was there a reaction of the Board as to
30

1 your responsibility? Did they say to you they felt
/11 2 you were responsible?

3 THE WITNESS: No, they didn't.

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1 MR. DEANS: Do you think Mr. Cauley
2 ordered those portraits?

3 THE WITNESS: No, Mr. Cauley ordered
4 finished prints.

5 MR. DEANS: And you ordered finished
6 prints?

7 THE WITNESS: And I ordered finished
8 prints.

9 MR. DEANS: You say that Mr. Cross, you
10 don't believe he was still a member of the Board. My
11 recollection, and I'm a little hazy on it because I
12 didn't realize we were going to talk about it, was that
13 Mr. Cross when he left the Board then did in fact or
14 was in fact retained by the Board for other jobs; is
15 true?

16 THE WITNESS: He could have been at that
17 time but he was retired as far as I can remember at that
18 time.

19 MR. DEANS: He was retired at that time
20 but at least subsequent to his retirement he was hired
21 by the Board from time to time?

22 THE WITNESS: He could have been but I
23 not familiar.

24 THE CHAIRMAN: Mr. Miller?

25 MR. MILLER: I have a couple of questions
26 Miss Bancroft, that aren't particularly on the evidence
27 you gave today but I think are very important to us on
28 this Hearing because we have other things to consider
29 besides the truth or lack of truth of the affidavit concerning
30 these pictures. They are just but a part of our evidence.

1 You are on sick leave at the present time?

2 THE WITNESS: That's right.

3 MR. MILLER: What was the cause of your
4 sick leave? Why did you elect to take it?

5 THE WITNESS: Because I elected to retire
6 at age 60 and I have accumulated sick leaves and they
7 are continuing until they expire.

8 MR. MILLER: So rather than a physical
9 illness it is an election to stop working early?

10 THE WITNESS: Correct.

11 MR. MILLER: You had enough sick leave
12 credits to cover a five year period?

13 THE WITNESS: No, definitely. I go on
14 pension this spring when my sick leave expires.

15 MR. MILLER: The other question I had
16 related to the Inquiry, why would you elect to -- in
17 electing to retire early was there a basic cause or is
18 it just you wanted to stop work?

19 THE WITNESS: I just wanted to stop.

20 MR. MILLER: Can you give us any insight
21 as a person who spent 42 years at the Board as to the
22 conditions of the Board at the time of your retirement,
23 the working conditions?

24 I think this is a very important to us,
25 Miss Bancroft. It is not the question that we have been
26 here questioning you about but it certainly was in the
27 Committee's Inquiry.

28 THE WITNESS: Being in the Administrative
29 Department, I had an idea that there was some dissention,
30 though just what it was about I wouldn't know and I know

1 that we worked very hard in the Administrative Department
2 and I had been given the opportunity to do work that I
3 had never had the opportunity to do before so as far as
4 I am concerned I thought I did a very good job.

5 MR. MILLER: Would you say there was a lot
6 of dissention within the other people?

7 THE WITNESS: Not in the Administrative
8 Department, no.

9 MR. MILLER: We have had it alleged that
10 50 or so people took early retirement. I assume perhaps
11 you are one of those 50 but the reasons have been left
12 up in the air. It has been implied they left because
13 they were unhappy.

14 THE WITNESS: Well, that is their business
15 not mine. I couldn't retire until age 65 because of the
16 pension.

17 MR. MILLER: You didn't have to quit because
18 working conditions had become intolerable?

19 THE WITNESS: No.

20 MR. MILLER: Those are all my questions,
21 Mr. Chairman.

22 THE CHAIRMAN: Mr. Allan?

23 MR. ALLAN: Miss Bancroft, I have listened
24 with very great interest to what you have said and I
25 wonder if I would be correct in assuming that the period
26 following the matter that has been discussed tonight
27 with regard to the pictures and your having been upset
28 if this was a combination of your concern about the work
29 or your concern as to whether or not you had carried out
30 the instructions with respect to the ordering of the

1 would be he who would be paying for them when they
2 arrived?

3 THE WITNESS: No, the only reason I felt
4 it was for his personal use was the reason why he asked
5 for it.

6 MR. GOOD: I notice in your affidavit
7 there is nothing in here which would indicate that the
8 pictures were for his personal use. It simply says, "I
9 told him how many Cauley wanted finished of each
10 and what size they were to be" so no place in the affidavit
11 do you indicate that these pictures that you ordered as
12 on the cardboard were for Mr. Cauley's personal use.

13 You say, "he gave me instructions as to
14 how many he wanted finished of each proof." What I am
15 saying is, did you really believe that they were going
16 to be for his personal use?

17 THE WITNESS: Yes, I said so, but not in
18 the affidavit.

19 MR. GOOD: There is nothing in the affidavit
20 that would indicate -- there isn't anything indicated that
21 he would give you instructions to have them ordered, but
22 whether it was for the Workmen's Compensation Board or for
23 his personal use, there is nothing ---

24 THE WITNESS: Only the reason he gave me
25 why he was ordering.

26 MR. GOOD: To show who is boss around here?

27 THE WITNESS: "Who is boss around here,"
28 yes.

29 MR. GOOD: Now we have established the
30 fact that both you and Mr. Cauley had indicated that there

21-6

1 were prints being ordered and you had no indication as
2 to whether he was going to use them personally or for
3 Board use in the affidavit but actually you thought that
4 they would be for his personal use?

5 THE WITNESS: Yes.

6 MR. GOOD: Why didn't you put that in the
7 affidavit?

8 THE WITNESS: I didn't think it was
9 necessary.

10 MR. GOOD: Now when you were questioned
11 as to why this signing of the affidavit had such an effect
12 on you that you missed over a month's work after that, you
13 said that the whole idea of dissention in the Board had
14 upset you; is that correct of what was said?

15 THE WITNESS: No, I didn't say that.

16 MR. GOOD: I have some notes here. The
17 idea of dissention, I think you will find is in the record
18 as quoted, and did you associate the ordering of these
19 extra pictures as part of the general conflict and the
20 general dissention within the Board?

21 THE WITNESS: Well, I did with the way
22 Mr. Cauley ordered them. There was something that was
23 there but what it was I don't know.

24 MR. GOOD: But yet you felt when you
25 appeared before the Board you couldn't tell them why
26 Mr. Cauley had ordered the extra pictures which in your
27 mind was as he said, "to show them who was boss."

28 THE WITNESS: I thought Mr. Cauley had
29 clarified it right there at the Board meeting. I don't
30 care how he could have put it but they were trying to find

21-7

1 out why he ordered so many pictures. Mr. Cauley could
2 have said anything to clarify it.

3 MR. GOOD: You think the ordering of the
4 pictures was within the internal operation of the Board?

5 THE WITNESS: That's the way I felt.

6 MR. GOOD: I am sorry to pursue this but
7 I gather by one statement you made that after the signing
8 of the affidavit you indicate this was all part of the
9 internal problems within the Board and that this is why
10 the effect of this dissention was so great upon you it
11 took a whole month and am I interpreting your statement
12 right.

13 MR. WALDEN: With respect, and I hesitate
14 to interrupt, but I don't think, Mr. Chairman, that the
15 question is being put quite fairly to the witness. I
16 think she gave a number of reasons as to why she was
17 embarrassed and that was the word she used.

18 MR. GOOD: I am sorry, I didn't make the
19 right notes but I thought that the dissention within the
20 Board was associated with why the signing of the affidavit
21 affected you so much physically.

22 THE WITNESS: No, that is not so at all.

23 MR. DONNELLY: Mr. Chairman, perhaps I
24 might be of assistance. As I understood that sequence,
25 the witness Miss Bancroft thought there was something
26 in the ordering of the pictures that Mr. Cauley's
27 attitude would be evidence of dissention to her and that's
28 what I understood her to say and perhaps I was wrong.

29 THE CHAIRMAN: Have you completed,
30 Mr. Good?

21-8

1 MR. GOOD: Yes.

2 THE CHAIRMAN: Are there any other member
3 of the Committee having any questions of Miss Bancroft?

4 Any other members of the Legislature?

5 MR. DEANS: You worked for Mr. Cauley for
6 a long time, Miss Bancroft?

7 THE WITNESS: Yes.

8 MR. DEANS: Did you have a good relations

9 THE WITNESS: Yes.

10 MR. DEANS: Am I correct you were his
11 private secretary, confidential secretary?

12 THE WITNESS: No.

13 MR. DEANS: What were you?

14 THE WITNESS: Mostly my work was on claim
15 and inquiries.

16 MR. DEANS: You worked with him rather than
17 for him?

18 THE WITNESS: That's right.

19 MR. DEANS: So you didn't get into discus
20 with Mr. Cauley about the things that were upsetting him
21 and so on?

22 THE WITNESS: No.

23 MR. DEANS: Were you aware of any of the
24 circumstances surrounding the atmosphere that had grown in
25 the Board? Were you aware at all that there was in fact,
26 other than Mr. Cauley's statement about showing them who
27 was boss, that there was dissention in the Board?

28 THE WITNESS: A change in policy was one
29 I was aware of that.

30 MR. DEANS: Did you work for Mr. Cauley

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1 prior to the change and after the change; is that right?

2 You worked with him prior to 1965 and after 1965?

3 THE WITNESS: No. I was transferred. I

4 was with Mr. Cauley, I went on holidays in June and

5 Mr. Cauley was away when I came back and, as far as I can

6 remember, I was only there for a very short time. Because

7 of the change in policy there would be no work left for me

8 and that's why I was transferred to the other department.

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1 MR. DEANS: Why would Mr. Cauley tell you
2 who worked on claims to order pictures? Why wouldn't
3 he just call his secretary?

4 THE WITNESS: There were a number of
5 things Mr. Cauley asked me to do other than just work
6 on claims.

7 MR. DEANS: Why when the portraits came,
8 and perhaps you can't answer this and you can't say, but
9 why when the portraits came in your opinion did Mr.
10 Cauley take them since he knew he didn't order them?
11 You mentioned he asked you to take them to his car and
12 did he mention anything to you or did he just say, "Take
13 them down to the car"?

14 THE WITNESS: He just said, "Take them
15 down to the car."

16 MR. DEANS: Did he bring them back?

17 THE WITNESS: When I asked him to bring
18 them back because we had to find the ones Mr. Hollingworth
19 wanted.

20 MR. DEANS: Thank you. There are a lot
21 of things I would like to ask you but I suspect that
22 probably you don't know.

23 THE CHAIRMAN: Any questions from other
24 members of the Legislature?

25 Mr. Lewis?

26 MR. LEWIS: You have been extremely
27 patient for something which I have no doubt is distressing
28 to you, and I will try to be brief.

29 You thought that Mr. Hollingworth was
30 with you when you met with the Board to discuss the

1 matter of the pictures. You thought when you listed the
2 names when you were there you thought Mr. Hollingworth?

3 THE WITNESS: Mr. Hollingworth was at the
4 Board Meeting, yes.

5 MR. LEWIS: He was at the Board Meeting?

6 THE WITNESS: That's correct.

7 MR. LEWIS: He seems to recall as memory
8 serves me that you met with the Board separately.

9 THE WITNESS: No, I didn't.

10 MR. LEWIS: He was there when you were
11 there?

12 THE WITNESS: He was there when I was
13 there.

14 MR. LEWIS: Another question, did you at
15 the time I take it from what you have said explain
16 pretty carefully to Mr. Hollingworth what you thought
17 had happened, exactly what took place at the time of
18 the purchase of the photographs? You feel that it was
19 clearly conveyed to him the error, the misunderstanding
20 or whatever it was?

21 THE WITNESS: At the Board Meeting?

22 MR. LEWIS: And prior to it.

23 THE WITNESS: I didn't discuss it prior
24 to that.

25 MR. LEWIS: With Mr. Hollingworth?

26 THE WITNESS: With Mr. Hollingworth, no.

27 MR. LEWIS: It was only at the Board
28 Meeting?

29 THE WITNESS: At the Board Meeting on
30 the 1st, I was called up with Mr. Cauley and Dr. Steele

22/3

1 and this was in the fall.

2 MR. LEWIS: When Mr. Cauley said to you --
3 what was the phrase, "Show him who was boss,"?

4 THE WITNESS: "I will show him who is boss."

5 MR. LEWIS: He meant he would show Mr.
6 Hollingworth he was boss, I take it. That's what you
7 thought he probably meant?

8 THE WITNESS: No, that's not what I thought
9 at all.

10 MR. LEWIS: Might I guess who it would be?

11 THE WITNESS: Yes.

12 MR. LEWIS: Would I be right in suspecting
13 that you thought he might have been referring to the
14 Chairman of the Board?

15 THE WITNESS: That's right.

16 MR. LEWIS: Had this sense of difference
17 between Mr. Cauley and the Chairman emerged within sight
18 and sound of yourself prior to that? Can you recall it
19 on any other occasion? Can you recall any past remarks;
20 can you recall the difference of opinion?

21 THE WITNESS: Actually we were aware of
22 some dissension.

23 MR. LEWIS: You were aware even when you
24 moved on to the Administrative Assistant's role?

25 THE WITNESS: That is quite true.

26 MR. LEWIS: Was it discussed in the
27 Administrative Branch from time to time?

28 THE WITNESS: No, it wasn't discussed at all.

29 MR. LEWIS: Over coffee, lunch?

30 THE WITNESS: No, not that I recall, not that

2/4

1 I know of.

2 MR. LEWIS: Only that it was amongst
3 Board members?

4 THE WITNESS: As far as I know.

5 MR. LEWIS: One last thought. You were
6 upset because you thought you might be comprising Mr.
7 Cauley by repeating what seemed to you to be the apparent
8 motives for ordering the additional pictures?

9 THE WITNESS: I didn't like to have to do
10 it.

11 MR. LEWIS: It distressed you because you
12 thought it might be harmful to him as well; is that a
13 factor in it?

14 THE WITNESS: I don't quite understand
15 what you mean.

16 MR. LEWIS: If you had revealed it you
17 thought it might be harmful to Mr. Cauley and that worried
18 you?

19 THE WITNESS: I hadn't any thought of
20 revealing that.

21 MR. LEWIS: It seems to me that you had
22 been at the Board for so long, 39 years, a very, very long
23 time at the time, and was this the first time you had
24 appeared before the full Board?

25 THE WITNESS: For anything like this, yes.
26 I had never been questioned before.

27 MR. LEWIS: You felt you were being
28 questioned. Were you comfortable in the meeting?

29 THE WITNESS: No, I wasn't. I was
30 embarrassed, very much so.

22/5

1 MR. LEWIS: Was not the atmosphere of
2 the Board a very comfortable one in terms of the relatio-
3 ship?

4 THE WITNESS: I didn't feel comfortable.

5 MR. LEWIS: You didn't feel comfortable
6 there?

7 THE WITNESS: No, I certainly didn't.

8 MR. LEWIS: Did you feel cross examined
9 like I am doing now?

10 THE WITNESS: No, I won't say that either

11 MR. LEWIS: You just felt embarrassed
12 about the whole proceeding?

13 THE WITNESS: I felt embarrassed to be
14 called because I had been there for so long and in front
15 of all the people that I had worked with for years, and
16 I had never run into anything like that in my life before.

17 MR. LEWIS: One last question: were you
18 surprised to be asked to sign an affidavit or weren't
19 you?

20 THE WITNESS: Well I didn't appreciate it,
21 but however ---

22 MR. LEWIS: Asked that?

23 THE WITNESS: This was what was asked.

24 MR. LEWIS: Who asked it of you?

25 THE WITNESS: Mr. Lane apparently, he
26 requested the affidavit to be taken.

27 MR. LEWIS: Thank you.

28 THE CHAIRMAN: Mr. Lawlor?

29 MR. LAWLOR: I too apologize to you sub-
30 jecting you to little examination on the point. Let's

1 have it straight. I have in front of me a transcript
2 of evidence that says, "Let's see what happened. Miss
3 Bancroft came back from being forced to
4 sign this perjured document hysterical.
5 She came into the secretarial office
6 where there were about eight present,
7 screaming, 'it is not true, it is not
8 true, they made me do it so they could
9 get rid of Mr. Cauley.'"

10 Is that true or not?

11 THE WITNESS: That is not true.

12 MR. LAWLOR: You were not hysterical?

13 THE WITNESS: No, I was not.

14 MR. LAWLOR: You were not screaming?

15 THE WITNESS: I was not screaming.

16 MR. LAWLOR: And you did not feel in such
17 a way that Mr. Cauley who you were associated with at
18 that time was being in any way pillaried or placed on
19 the defensive?

20 MR. WALDEN: I wonder, Mr. Chairman, if
21 the question could be rephrased. The witness doesn't
22 understand that.

23 THE CHAIRMAN: It is too lengthy, Mr.
24 Lawlor.

25 MR. LAWLOR: Did you get the impression at
26 this time from any source that a pressure was being put
27 on you or anyone immediately around you to get rid of
28 Mr. Cauley?

29 THE WITNESS: No, I certainly didn't.

30 MR. LAWLOR: What is the position? Did

22/7

1 | you know Mr. Cross previous to your giving the affidavit

2 | THE WITNESS: I had worked for Mr. Cross
3 | when our offices were in the other building.

4 | MR. LAWLOR: Was he retired at that time?

5 | THE WITNESS: I don't know whether he was
6 | retired at that time.

7 | MR. LAWLOR: Was there any suggestion
8 | that Mr. Lane who took the statement from you may have
9 | taken the affidavit?

10 | What did they do in order to take the
11 | affidavit? Did Mr. Cross come to you or did you go to
12 | another office?

13 | THE WITNESS: No, I was called upstairs
14 | and sent to the office where Mr. Cross was.

15 | MR. LAWLOR: Did he read the affidavit.
16 | over to you?

17 | THE WITNESS: That I don't recall, but
18 | I know I read the affidavit myself.

19 | MR. LAWLOR: You read the affidavit
20 | personally?

21 | THE WITNESS: That's right.

22 | MR. LAWLOR: Thank you very much.

23 | MR. MARTEL: Were you surprised this
24 | afternoon based on what you said tonight, that you had
25 | given your interpretation of what happened in the ordering
26 | of the pictures, when Mr. Hollingworth in fact totally
27 | ignored mentioning that to the Committee, in fact he
28 | shied right away from it.

29 | THE WITNESS: No, that didn't surprise me

30 | MR. MARTEL: Well it surprised me that he

1 would give the impression that he knew nothing about
2 the explanation you gave this evening as to why the
3 pictures and the portraits were ordered, and the mix up
4 because he gave the impression of a number of orders and
5 that there was really no effort to clear it up, and this
6 is what bothered me all afternoon, Mr. Chairman, if I
7 might, that this material coming forward and there
8 didn't seem to be any effort to get the facts really
9 straight. I must say, and my last point, I wasn't
10 really impressed with what Mr. Hollingworth said and the
11 way he said it.

12 MR. LEWIS: Can one ask a question of
13 Mr. Donnelly on one point?

14 Mr. Donnelly, you made a point, sir, today
15 of indicating to the effect of the arms length relationship
16 which was established in the swearing of the affidavit
17 in the case of Mr. Hollingworth by sending him over to
18 a Harbor Commission lawyer because it was only a year
19 ago if I recall what you said that the situation changed.

20 MR. DONNELLY: I think it was in September
21 of last year and I'm not sure of the date but it was
22 around that time.

23 MR. LEWIS: That does not strike you a
24 trifle odd that in the case of Miss Bancroft, a man for
25 whom she had worked for ten years and who was subsequently
26 to sit pro tem on the Board and had clearly been deeply
27 involved with the Board would be in fact called upon to
28 sign or swear the affidavit?

29 MR. DONNELLY: I am not really sure that
30 I understand what you are asking me, but if it's a

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1 technical basis, if he was really a member of the Board
2 and I will have to look at the list to tell you exactly
3 the situation, but if he were in compliance with the
4 existing Rules of Practice. at that time I don't see
5 anything odd about it, sir.

6 MR. LEWIS: All right.

7 MR. LAWLOR: But the fact of the matter
8 was that he probably wasn't. He appears to have been
9 a pro tem member of that Board. Would you think if that
10 were the case that he would then under the Rules of
11 Practice be competent to swear that affidavit?

12 MR. DONNELLY: I would have to hear more
13 about that before I pass an opinion.

14 MR. LAWLOR: Will you look into it so
15 we will know?

16 MR. DONNELLY: I suspect I will. I
17 suspect he will be a witness here very shortly, sir.

18 MR. ROY: Miss Bancroft, if you might
19 just bear just a few minutes longer and there might be
20 some repetition here and that is one of the problems
21 when you are on sort of the bottom of the totem pole.
22 Did it strike you as somewhat strange that Mr. Cauley
23 should order all these pictures?

24 THE CHAIRMAN: That has been asked a number
25 of times, Mr. Roy.

26 MR. ROY: I just want to lead evidence.

27 THE WITNESS: Yes, because of the fact
28 the way he ordered them and the reason he ordered them.

29 MR. ROY: I tell you why I am asking
30 this, I find it interesting that you should keep as a

1 record this piece of cardboard. Did you expect something
2 to fall from that? Is this why you kept this?

3 THE WITNESS: I wondered whether or not
4 if at any time the number might be questioned.

5 MR. ROY: I see. And you kept this
6 cardboard in your files with you since that time?

7 THE WITNESS: It has been in my safety box
8 at home, that is where it has been.

9 MR. ROY: Now, you mention that when you
10 started being examined or questioned about this
11 occurrence, that you first of all gave a statement
12 prior to the affidavit. I think you said you gave a
13 statement to somebody; is that right?

14 THE WITNESS: That's right.

15 MR. ROY: And who did you give the
16 statement to?

17 THE WITNESS: Mr. Eric Lane took the
18 statement.

19 MR. ROY: Did he write the statement
20 down? Did he take it in written form?

21 THE WITNESS: I would imagine that he
22 would.

23 MR. ROY: Is that statement, Mr. Chairman,
24 around?

25 MR. DONNELLY: So far as I know it isn't.

26 MR. ROY: Now, if I might just carry on
27 from this point, I take it that you read about this in
28 the papers from last week's occurrence what was written
29 up in the papers about this whole occurrence in your
30 affidavit?

22/11

1 THE WITNESS: Not all of it, no.

2 MR. ROY: Is this the first that you were
3 aware that there was something going on in this whole
4 investigation or this Committee now, what you read in
5 the papers? What I am trying to say is, you were read
6 by Mr. Lawlor about what Mr. Cauley said your reaction
7 had been to the signing of this affidavit. Did you read
8 that in the paper?

9 THE WITNESS: Yes, I read that in the
10 paper.

11 MR. ROY: Were you surprised about his
12 version of your reaction at that time?

13 MR. WALDEN: Mr. Chairman, I don't think
14 the witness quite understands the question. Could it be
15 rephrased?

16 MR. ROY: What I am trying to say is, when
17 did it first come to your attention that you were
18 involved in this whole occurrence that we are looking
19 into now?

20 THE WITNESS: When it came out in the
21 papers.

22 MR. ROY: How long ago was that?

23 THE WITNESS: Wednesday.

24 MR. ROY: In any event, has anyone approached
25 you since that time about giving your evidence here today?

26 THE WITNESS: Has anyone approached me?

27 MR. ROY: Yes, has anyone approached you
28 to discuss -- I mean apart from your counsel of course
29 but has anyone else approached you about giving your
30 evidence here today?

1 THE WITNESS: No, except the statement,
2 the Government inspectors, it was sent out.

3 MR. DONNELLY: Mr. Chairman, perhaps I
4 can explain. I caused an inspector from the Provincial
5 Police to go out and serve a subpoena and take a
6 statement from Miss Bancroft, and I think it was a week
7 ago tonight if I am not mistaken, in the anticipation
8 your meetings would start last Wednesday morning at
9 10:00 o'clock. I think it was at that time it was
10 done. As I recall it was a week ago this afternoon
11 that I was appointed.

12 MR. ROY: Anyone else apart from that,
13 anyone else from the Board approached you about giving
14 evidence here today?

15 THE WITNESS: No..

16 MR. ROY: Now, just one question, and
17 this might be somewhat naive on my part because I have
18 not been around for the full hearing. Who did finally
19 pay for those pictures; do you know?

20 THE WITNESS: I am not exactly sure, no.
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23-1

1 MR. ROTH: Thank you, Mr. Chairman.

2 THE CHAIRMAN: Does that conclude the
3 questioning by the Committee and other members?

4 Miss Bancroft, on behalf of the Committee
5 we want to thank you most sincerely for giving us your
6 time.

7 MR. HUMPHREY: May I through the Commission
8 Counsel ask some questions?

9 Sorry, Miss Bancroft. It won't take long.

10 MR. DONNELLY: Miss Bancroft, do you have
11 a copy of the affidavit in front of you? May I direct
12 your attention to the top of page two, the sentence there
13 beginning, "They had obviously been taken home by Mr. Cauley
14 in error and were returned for Hollingworth's use." Do
15 you see the part I am referring to? I wonder if it might
16 make better sense if I go back to the beginning of the
17 paragraph. Paragraph four: "Approximately two weeks later

18 two or more boxes of pictures arrived on
19 Mr. Cauley's desk. The orders were mixed
20 up and I helped Mr. Hollingworth to check
21 and see whether any of the pictures he
22 required for the Board were mixed in with
23 the pictures sent to Mr. Cauley. Mr. Hollingworth
24 told me that the balance of his order
25 was not included in the boxes on Mr. Cauley's
26 desk. They had obviously been taken home
27 by Mr. Cauley in error and were to be
28 returned for Mr. Hollingworth's use."

29 Mr. Humphrey has asked me to inquire from you as to
30 how that reconciles with your statement that you took the

1 boxes down to Mr. Cauley's car and when Mr. Hollingworth
2 wanted what he was entitled to for the Board's order they
3 weren't in what was left in Mr. Cauley's office so I had
4 to ask Mr. Cauley, I told Mr. Cauley and Mr. Cauley brought
5 back the boxes and it indicates that the Board's portraits
6 apparently were taken home in those boxes by error.

7 MR. DONNELLY: All of Mr. Hollingworth's
8 copies were not at the Board, and you say they must have
9 gone with the boxes you took; is that what you are saying?

10 THE WITNESS: That's right.

11 MR. DONNELLY: Mr. Humphrey has asked me to
12 inquire from you if you were aware that Mr. Cauley was
13 in jeopardy of paying for part of the order at some time.
14 Did it come to your attention that a claim was personally
15 made against him?

16 THE WITNESS: No, I had no idea about that
17 at all.

18 MR. DONNELLY: Did you have any knowledge
19 as to particularly why the affidavit was being taken then?

20 THE WITNESS: No, I didn't.

21 MR. DONNELLY: You didn't realize it related
22 to a dispute between Mr. Cauley and the Board as to who
23 should pay?

24 THE WITNESS: No, I didn't know what it
25 was all about at all.

26 MR. DONNELLY: I have also been asked to
27 point out and I think the question was raised over here
28 by Mr. Good that it seems odd that no reference was made
29 in the affidavit to the distinction of the mistake in
30 prints or portraits and Mr. Good proceeded to put that

23-3

1 | question to you. Mr. Humphrey asked me to inquire why
2 | did that not appear in the affidavit. It seems to be the
3 | very kernel of the problem really.

4 | THE WITNESS: That I don't know.

5 | MR. DONNELLY: Do you know if that was
6 | included in the statement that he made prior to the taking
7 | of the affidavit?

8 | THE WITNESS: Well, it should have been
9 | because that's what I said twice and I said it at the Board
10 | room and I am sure it must have been in my statement.

11 | MR. DONNELLY: Do you recall it or are you
12 | just coming to that conclusion?

13 | THE WITNESS: No, I am not coming to that
14 | conclusion.

15 | MR. DONNELLY: Do you recall making the
16 | statement about the confusion and offering to pay if it
17 | was your mistake?

18 | THE WITNESS: That I know I did.

19 | MR. DONNELLY: Is it possible that the
20 | Mr. Cauley intended making of these pictures he ordered
21 | although it may be Mr. Cauley's use, it was not a personal
22 | use, that is, that he may have used them himself to direct
23 | to some persons on the Board or some Board officers or
24 | something of that nature?

25 | THE WITNESS: Not that I know of.

26 | MR. DONNELLY: In your experience, working
27 | with him, did you know of him to do such a thing, to
28 | direct pictures to certain officers or source or something
29 | of that nature?

30 | THE WITNESS: Not that I know of.

-4 1 MR. DONNELLY: The reason there are so many
2 rather makes one think they weren't for personal use, it
3 must have been there was some institutional use concept;
4 do you know anything about that?

5 THE WITNESS: No, I certainly don't.

6 MR. DONNELLY: I might say, Mr. Chairman,
7 that I am very flattered that Mr. Deans asked me to put
8 a question for him.

9 MR. DEANS: I will ask the question myself.
10 I am sorry, I get into this -- I will wait.

11 I am sorry.

12 MR. DONNELLY: I am sorry. I think
13 Mr. Humphrey is finished.

14 MR. HUMPHREY: That is all, thank you.

15 THE CHAIRMAN: Do you have another question,
16 Mr. Deans?

17 MR. DEANS: I do, flowing from the questions
18 that were asked.

19 You are aware that Mr. Cauley did take on
20 rather extensive speaking and visiting engagements in the
21 trade unions?

22 THE WITNESS: Yes, I am.

23 MR. DEANS: I thought you would be. Are
24 you aware of Mr. Cauley ever sending pictures to those
25 trade union conventions for use in the convention booklet
26 when he was going to be a speaker?

27 THE WITNESS: I am not aware of that, no.

28 MR. DEANS: Thank you.

29 THE CHAIRMAN: Thank you again, Miss Bancroft,
30 for appearing and being so helpful to the Committee.

23-5

1 MR. WALDEN: Mr. Chairman, may this wit-
2 now be excluded?

3 THE CHAIRMAN: I believe so.

4 MR. DONNELLY: Mr Lane please?

5 THE CHAIRMAN: (Swears the witness)

6
7 ERIC LANE, Sworn:

8
9 EXAMINATION BY MR. DONNELLY:

10 Q. Mr. Lane, your full name is?

11 A. Eric Lane.

12 Q. Your occupation?

13 A. I am a lawyer.

14 Q. And are you presently in private
15 practice, sir?

16 A. Yes.

17 Q. This is with one of the firms in t
18 city?

19 A. That is correct.

20 Q. And at some time were you an emplo
21 of the Workmen's Compensation Board?

22 A. That is correct, sir.

23 For a period of approximately two years,
24 1965-66, in that area.

25 Q. And are you able to identify the
26 documents that have just been given to you, the two
27 affidavits?

28 MR. LAWLOR: I'm sorry, what was the tim
29 of the Board?

30 MR. DONNELLY: Two years, 65-66, I think

-6 1 the answer.

2 A. Imperfectly, Mr. Donnelly, my name
3 is on the back of both of them as the Board's Solicitor,
4 one of them is an Affidavit of Merits and I was here this
5 afternoon and saw the young man from the Supreme Court
6 Office or County Court Office bring it here and I assume
7 that was filed in this action and if it was there was
8 a practise that as the Board's Solicitor, all documents
9 filed in defense of the Board in any action should have
10 my name on the back as the Board's Solicitor.

11 Q. What was your capacity at the Board
12 when you were there, sir?

13 A. I had two titles; I was the secretary
14 and the general counsel.

15 Q. And as general counsel were you in
16 charge then of legal matters relating to the Board?

17 A. Yes, sir. I had^a/law department
18 and an investigation department under my jurisdiction.

19 Q. And do you recall, sir, the incidents
20 that gave rise to the affidavits being filed? Do you have
21 a recollection of the matter?

22 A. A very poor one, yes.

23 Q. Now do you have presently in your
24 custody any files relating to the matter?

25 A. No, sir.

26 Q. There was some reference made to
27 notes that may have been taken preliminary to the drawing
28 of the affidavits. Do you have any such notes available?

29 A. No.

30 Q. Can you tell the Committee just briefly

23-7

1 | what the nature of the action was of the claim made
2 | against the two defendants?

3 | A. I could better with the complete
4 | record. As I recall, sir, it was a suit for an account
5 | that was obviously commenced with a specially endorsed
6 | writ that required an Affidavit of Merits in defense of
7 | the Board. There are two defendants, the Board which was
8 | my employer and Mr. Cauley, its Vice-Chairman. For and
9 | on behalf of the Board I was required to file an Affidavit
10 | of Merits and that is one of the two affidavits here.

11 | Q. Just a moment. You say that it was
12 | probably an action of a specially endorsed writ?

13 | A. Yes.

14 | Q. And that is a type of writ or claim
15 | that requires a certain affidavit to be filed in reply?

16 | A. That's right.

17 | Q. Or in default judgment : may go; is
18 | that what you are saying?

19 | A. That's correct.

20 | Q. Judging by the Affidavit of Merits
21 | you say it must have been a specially endorsed writ?

22 | A. That's right.

23 | Q. You recall it was on an account?

24 | A. Yes, it must have been on an account
25 | yes.

26 | Q. Of your own recollection, do you
27 | recall it was for pictures that were ordered, do you know
28 | that?

29 | A. Yes, I do, yes.

30 | Q. Tell me, one affidavit appears to be

1 an Affidavit of Merits; is that correct?

2 A. Yes, it is so headed.

3 Q. What is the other affidavit?

4 A. It is the affidavit of Florence M.

5 Bancroft and it's drawn or styled in the same action to
6 the same effect.

7 Q. The purpose of taking the Affidavit
8 of Merits is simply to comply with the rules of Court and
9 in the if there is a defense to file, / absence of that defense
10 to record a default judgement?

11 A. It's required by the rules, yes, sir.

12 Q. What was the purpose of the taking
13 of the other affidavit then?

14 A. Now I can't say accurately, I don't
15 know either if it was filed. I wasn't sure and perhaps
16 you could help me, is this second affidavit one which was
17 brought by the young man from the County Court Office?

18 Q. In order that we may keep the record
19 straight, to deal with the first and second one, Mr. Holling-
20 worth is the Affidavit of Merits, isn't it?

21 A. Yes, sir, that is Exhibit 22.

22 Q. Miss Bancroft's is not?

23 A. I beg your pardon. I have yours,
24 yes. Exhibit 21 is Miss Bancroft's. I couldn't tell from
25 listening to the young man this afternoon whether he
26 brought that from the court record as well.

27 Q. The record is filed but I rather think
28 it isn't on that file.

29 What then, sir, was the purpose of the taking
30 of the second affidavit, the one by Miss Bancroft?

23-9

1 A. I can't honestly now recall.

2 Q. Do you recall the circumstances of
3 the taking of either affidavit?

4 A. No, sir. I have heard both Miss P
5 and Mr. Hollingworth testify and that has revived some
6 my memory but other than that it was a routine matter;
7 I don't recall it.

8 Q. Is your evidence to the Committee
9 that apart from what you heard said here that you don't
10 specifically remember the taking of the affidavits or the
11 drawing of them?

12 A. The drawing, no, sir, I really don't
13 if that is accurate. I do remember Mr. Hollingworth talking
14 to me about the facts. I was concerned because I was
15 responsible for the preparation of the Affidavit of Merit.
16 If as Mr. Hollingworth and Miss Bancroft say, I worded it
17 from the material or information they made available to me
18 and I am sure I did. I am sure they are correct and that is my
19 recollection.

20 Q. Do you have any recollection of your
21 own of the taking the instruction that led to the preparation
22 of either affidavit?

23 A. No, sir, I really don't.

24 Q. You simply say you are sure they are
25 correct because -- why are you so sure?

26 A. I am sorry, I didn't say that. I
27 as I heard Mr. Hollingworth and Miss Bancroft recite their
28 recollections, it seemed perfectly logical and consistent
29 with what I recall and therefore I am sure that as they
30 remember it so then it happened.

1 Q. And you say that it was a routine
2 matter at the time and did not impress itself on your
3 mind and you did not recall it?

4 A. It was routine to me, yes, sir. It
5 was a minor County Court action and we were engaged in
6 major Supreme Court action.

7 Q. If a circumstance had occurred where to
8 your knowledge the affidavits were falsely sworn or under
9 some compulsion or something, would that be a routine
10 matter or would that be nonroutine?

11 A. Obviously.

12 Q. Obviously what?

13 A. Perjury is not routine, sir, at any
14 time.

15 Q. I am not just sure that is perjury,
16 with respect?

17 A. Neither am I, I'm sorry.

18 Q. It may be the swearing of a false
19 document but I'm not sure it's perjury.

20 A. Yes.

21 Q. But, in any event, you say it was
22 a routine matter and did not impress itself upon your mind?

23 A. Yes, sir.

24 Q. I am saying if such a thing had
25 happened, would you expect your mind to be impressed and
26 you might now remember if there were either some compulsion
27 or swearing of false documents?

28 A. Most definitely.

29 Q. Do you in fact have any recollection
30 of either of those aspects in connection with either

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1 document?

2 A. Most definitely.

3 Q. There was some question on the
4 affidavit as to the date of occurrence, in one they
5 indicate March and one May.

6 A. Yes.

7 Q. Do you have any explanation to give
8 to the Committee as to that, dealing with your own memory
9 of the events?

10 A. Nothing.

11 Q. And anything that you did say would
12 be simply to reconstruct or presume as to how?

13 A. Just to presume, exactly.

14 Q. There also has been some mention
15 that Miss Bancroft's affidavit omits the important question
16 about the prints or portraits. Do you have any recollection
17 of that, sir?

18 A. I am not sure I understand.

19 Q. The question or the amount of the
20 account apparently arises because portraits were ordered
21 whereas prints may have been intended to be ordered or
22 portraits were delivered anyway.

23 A. Yes.

24 Q. Do you have any recollection of the
25 circumstance?

26 A. As to any one was delivered or not
27 was not.

28 Q. As to particularly as to why there
29 is no reference in the affidavit.

30 A. No, the only thing I can say, if I

1 not in there, then Miss Bancroft did not want it to be
2 part of her affidavit for any number of reasons and that
3 is an assumption on my part and nothing more.

4 Q. Tell me, Mr. Cross is here and may
5 give evidence later but are you able to tell us what his
6 capacity was with the Board at that time? If you don't
7 know I would rather you didn't guess at it, that is
8 because undoubtedly he will know.

9 A. He will.

10 Q. Do you know?

11 A. Yes, sir, I believe I do. Mr. Cross
12 had retired but was invaluable and I was a new solicitor
13 at the Board and I needed assistance and I prevailed upon
14 him to come back from time to time and take special jobs
15 and he back on two or three occasions doing special
16 jobs.

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1 Q. Do you know particularly what he
2 was doing at the time of the signing of this affidavit?

3 A. No, sir, he will but I don't.

4 Q. Do you have any further recollectio
5 of the circumstances in the swearing of either affidavi
6 other than you have told us about, sir?

7 A. No.

8 MR. DONNELLY: Members of the Committee
9 or the House may ask you questions, sir.

10 MR. DEANS: Mr. Lane, you say that the
11 taking of the affidavit is a routine matter and I don'
12 doubt for a moment that the taking of affidavits for
13 this kind of action is a routine matter. Was it a
14 routine matter to take affidavits from employees of the
15 Board when it involved the vice-chairman or a senior
16 official of the Board in a court action?

17 THE WITNESS: This is the only one that
18 I know of that did so involve the vice-chairman, sir.

19 MR. DEANS: It wasn't then a routine matter
20 it was an extraordinary matter?

21 THE WITNESS: With respect, sir, I don't
22 think I said the taking of the affidavit was a routine
23 matter. I said that actions with the Board were routine
24 yes, and filing affidavits of merits in my position as
25 the Board's general counsel was a routine matter.

26 MR. DEANS: Well, did you have -- since
27 this was then not a routine matter in terms of the acti
28 that was contemplated, did you have any discussion with
the Board about the proper course of action?

29 THE WITNESS: What do you mean proper co

1 of action?

2 MR. DEANS: Miss Bancroft has said, in
3 fact she has indicated she made a statement to the Board
4 and I believe she said you were there?

5 THE WITNESS: Yes, I believe she said that.

6 MR. DEANS: That in fact the ordering of
7 the prints was that she had ordered prints and the
8 action itself was over portraits; that neither Mr. Cauley
9 nor herself had ordered portraits?

10 THE WITNESS: No, sir. But with respect --

11 MR. DEANS: She said that. She said that
12 as a result of what had happened that she would, if there
13 was an error and it was her fault and she would pay it.

14 Now with that in mind and if you heard
15 her say that -- did you hear her say that?

16 THE WITNESS: No, sir. With respect, I
17 disagree with your recollection of what they said.

18 MR. DEANS: Let's try it again then. I
19 will try it more carefully this time.

20 Miss Bancroft tells us or told us, and I
21 don't have the record in front of me but as I recall she
22 told us that she told the Board that she ordered prints.
23 Now she told us today that she told the Board that if
24 there was an error on her part that she was prepared to
25 pay for it.

26 THE WITNESS: Yes, sir.

27 MR. DEANS: She showed us the document
28 that she took from Mr. Cauley and ordered four prints;
29 right?

30 THE WITNESS: Yes.

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1 MR. DEANS: Now, with that in mind and
2 recognizing that the major problem rather than the
3 number of prints was the size of the bill ---

4 THE WITNESS: I disagree, sir.

5 MR. DEANS: This is where we disagree?

6 THE WITNESS: That is the point where I
7 didn't understand that to be the issue as related by
8 Miss Bancroft today. As I understood it, Mr. Holling
9 worth testified about the use of 12 prints and Miss
10 Bancroft was delivering an order for -- I don't know
11 what the total number is -- but other documents. The
12 question is whether or not -- when does a print become
13 a portrait is a matter of photographic concern I suppose
14 A portrait by definition is a touched up print.

15 MR. DEANS: Extremely more expensive --
16 done on matte rather than a gloss. A print is a gloss,
17 it is a print.

18 THE WITNESS: You may be right.

19 MR. DEANS: So did it not strike you as
20 odd that the Board would be going to such lengths to
21 take sworn affidavits about the actions of the senior
22 member of the Board, the vice-chairman, in a matter of
23 such insignificance in fact we are only talking about
24 40 prints and that there was a dispute already within
25 the Board as to whose fault it was that they were ordered
26 in the first place?

27 THE WITNESS: We are talking about, sir,
28 in excess of \$1,000 worth of portraits, prints or
29 whatever; that as far as the Board were concerned it
30 had not been ordered by the Board or for the Board's

1 use and the Board, if I recall, was not prepared to pay
2 that photographer for those particular prints or por-
3 traits.

4 MR. DEANS: May I ask you, referring to
5 the letter which Mr. Hollingworth placed on the record
6 in which he sent to the photographer, and the letter I
7 am referring to I will send you a copy of -- does someone
8 have a copy that could be given to Mr. Lane for a moment
9 to look at it -- it is a letter from Mr. Hollingworth,
10 Director of Public Relations for the Workmen's Compensat-
11 ion Board to Mr. Gerald Campbell. Mr. Hollingworth
12 obviously by his own statement ---

13 THE WITNESS: I don't have the same letter.
14 This is the letter to me.

15 MR. DEANS: Does someone have a copy? Do
16 you have an extra copy?

17 Can you recall ever seeing that letter before?

18 THE WITNESS: I don't recall, no.

19 MR. DEANS: You can't recall that letter
20 having ever been brought to your attention at the time the
21 affidavits were being sworn and the action was being
22 commenced?

23 THE WITNESS: No, sir.

24 MR. DEANS: Had you seen the letter at the
25 time over the signature of the Director of Public Relations
26 addressed to Mr. Campbell would you have agreed then that
27 the Board did not order the portraits?

28 THE WITNESS: That is speculation, sir.

29 MR. DEANS: I'm asking you now looking at
30 the letter and the letter over the signature of the

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1 Director of Public Relations, if you received such a
2 letter from the Director of Public Relations of the
3 Board if you were a photographer, would you believe th
4 the Board was ordering portraits?

5 THE WITNESS: The Committee really wants
6 my opinion on this matter?

7 MR. DEANS: Yes, I want your opinion
8 because your opinion was very important at the time.

9 THE WITNESS: My opinion, sir, would be
10 that an intelligent photographer would have received
11 the letter and realized that there needed to be some
12 further communication by telephone as is requested in
13 the second last paragraph and that that intelligent
14 photographer would have called Mr. Hollingworth that
15 the order would have been straightened out. That is m
16 opinion of that letter now I say for the first time.

17 MR. DEANS: That is in fact exactly what
18 happened in that the photographer telephoned Mr.
19 Hollingworth and Mr. Hollingworth told him to proceed
20 and make what was on the letter. Now having called
21 Mr. Hollingworth and being told to go ahead would you
22 then consider that the Board had ordered the portraits?

23 THE WITNESS: No, sir, I wouldn't.

24 MR. DEANS: You wouldn't?

25 THE WITNESS: No, sir.

26 MR. DEANS: Who would you think ordered
27 them then?

28 THE WITNESS: I don't know, sir.

29 MR. DEANS: Were you not interested in ta
30 as the solicitor of the Board at the time and the

1 Secretary of the Board and General Counsel I believe you
2 call it? Were you not interested in that at the time
3 of the preparation of the case? Were you not interested
4 in getting all of the facts of the case at the time since
5 you in fact were going to have to defend the action?

6 THE WITNESS: Yes.

7 MR. DEANS: Why then did you not have this
8 before you in order that you would understand the full
9 implications of what happened?

10 THE WITNESS: I didn't say I didn't have
11 it before me, sir. I said I don't recall seeing it. In
12 defense of the Board there was prepared and filed and
13 served an affidavit of merits and the defense of the
14 Board was in good hands I thought.

15 MR. DEANS: The defense of the Board was
16 in good hands?

17 THE WITNESS: I thought so.

18 MR. DEANS: Except the man you were fight-
19 ing against would have produced the letter which showed
20 that he had in fact been given a letter to order the
21 portraits.

22 Do you think then that you had all of the
23 evidence given to you at the time?

24 THE WITNESS: I don't know, sir.

25 MR. DEANS: It strikes me and it is in the
26 form of a question, but it strikes me that if I were
27 the general secretary or the general counsel and an
28 action was being contemplated against the Board and its
29 vice-chairman and affidavits were being taken which were
30 obviously an intent to show that the vice-chairman

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1 rather than the Board was responsible, and this is what
2 is being done in these affidavits, that I would have
3 wanted all of the details presented to me including
4 the order forms, including everything that had transpi
5 surrounding that action. And I think if you had all of
6 that I would suggest to you, and respectfully suggest
7 to you, that having been given all of this that the
8 Board then obviously through someone who was in power
9 to order pictures and in fact ordered the pictures and
10 that there was an internal dispute within the Board as
11 to whose responsibility it was to pay and not a dispute
12 between the Board and Mr. Campbell and I leave it to yo
13 either sit and look at me or comment. It's entirely
14 up to you.

15 THE WITNESS: I can do more than sit and
16 look, sir. I can't really see there was a question thes

17 MR. DEANS: I say to you then that would
18 be my opinion and that I feel that either you weren't
19 given all of the facts or in fact what went on wasn't
20 in the best interest of the Board.

21 MR. ALLAN: Mr. Lane, I wonder if I am
22 correct in assuming from your statements that you took
23 the first step, you took the initial step that you thoug
24 to be necessary in the defense of a court action that
25 might come about?

26 THE WITNESS: That's right, sir.

27 MR. ALLAN: And it never came about?

28 THE WITNESS: I don't think it did, sir, o

29 MR. ALLAN: So that you in your opinion
30 went as far as you needed to go having regard to the

1 information that came to you?

2 THE WITNESS: At that time, yes, sir.

3 MR. ALLAN: Perhaps I might add that if
4 the matter was coming to court then you would have given
5 it further consideration perhaps?

6 THE WITNESS: Yes, sir.

7 MR. ALLAN: Thank you.

8 THE CHAIRMAN: Mr. Good?

9 MR. GOOD: As to the defense of the
10 action of the photographer ---

11 THE WITNESS: I was the solicitor for
12 the Compensation Board only, sir.

13 MR. GOOD: One of the defendants?

14 THE WITNESS: One of the defendants.

15 MR. GOOD: Was the purpose of taking the
16 affidavits to prove that the order was placed by Mr.
17 Cauley rather than the Workmen's Compensation Board?

18 THE WITNESS: No, sir.

19 MR. GOOD: Why then were the affidavits
20 taken?

21 THE WITNESS: Because of the rules of
22 practise in Ontario provide when an action is commenced
23 by a specially endorsed writ that the defendant must,
24 by way of the first step in his defense, file an
25 affidavit of merits. I was instructed to prepare and
26 file an Affidavit of Merits for my employer, Workmen's
27 Compensation Board.

28 MR. GOOD: So the affidavits really were
29 not taken with any thought of being used as part of
30 your defense in the action?

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1 THE WITNESS: I wouldn't say that either
2 with respect. As part of the defense of the Workmen's
3 Compensation Board is the first step that it must take
4 under the Rules of Practice and that is to file an
5 affidavit of merits. Thereafter the other defendants
6 file affidavits of merits as well and then the next
7 step provided by the rules requires the plaintiff to
8 file a statement of claim, thereafter the defendants
9 are required to file statements of defense and that is
10 was and is generally the sequence of a law suit.

11 MR. GOOD: So at this point of time you
12 were really not interested or you weren't trying to
13 ascertain from the affidavits who in fact had ordered
14 the portraits?

15 THE WITNESS: The purpose of the affidavit
16 was solely and simply to take the first necessary step
17 in the defense of the Board of that action.

18 MR. GOOD: Who instructed you to take the
19 action?

20 THE WITNESS: The Board or chairman.

21 MR. GOOD: The Board or chairman, well
22 who specifically?

23 THE WITNESS: I can't recall.

24 MR. GOOD: The chairman or the Board?

25 THE WITNESS: I can't recall.

26 THE CHAIRMAN: Mr. Lewis?

27 MR. LEWIS: Mr. Lane, you continue to
28 refer to affidavits when you talk about affidavits of
29 merit. If I understood Mr. Donnelly only Mr. Holling
30 worth's was an affidavit of merit filed in statutory

1 almost response to the issue of the claim. Miss
2 Bancroft's required not an affidavit of merit?

3 THE WITNESS: No.

4 MR. LEWIS: It is an affidavit whose
5 drawing of you have no explanation particularly for?

6 THE WITNESS: In the action it was not
7 filed.

8 MR. LEWIS: Quite unrelated, Mr. Lane,
9 were you aware in your two years at the Workmen's
10 Compensation Board of any apparent friction amongst the
11 members of the Board?

12 THE WITNESS: Not if you use the word
13 "friction", sir, no.

14 MR. LEWIS: Were you aware of a continuing
15 disagreement between members or among members of the
16 Board?

17 THE WITNESS: With respect to the relatively
18 new appeal procedure, yes, sir, there was some dis-
19 agreement between the chairman and the vice-chairman
20 and, yes, I was aware of it.

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1 MR. LEWIS: I take it as you are aware
2 of what you must have empirically experienced and how
3 would it have manifested itself? Were there exchanges
4 about it? Were there debates, discussions, disputes
5 in your presence?

6 THE WITNESS: Discussions, yes, I will
7 agree to discussions.

8 MR. LEWIS: You will agree to discussions?

9 THE WITNESS: Yes.

10 MR. LEWIS: And that is the only level
11 which you experienced? A discussion doesn't display the
12 flavour of emotion, it simply conveys an exchange.

13 THE WITNESS: Sir, we are talking about
14 impressions, and emotions and professionalism don't
15 to me denote the same thing. If you would like to inquire
16 whether there was some heat in the discussions I will
17 concede that there was from time to time because there
18 were intelligent strong minded professionals with
19 different views.

20 MR. LEWIS: Did you think in your opinion
21 from what you were able to observe that these heated
22 discussions impaired the functioning of the Board in
23 any way?

24 THE WITNESS: No, sir.

25 MR. LEWIS: You did not feel that?

26 THE WITNESS: No, sir.

27 MR. LEWIS: Thank you.

28 THE CHAIRMAN: Mr. Lawlor?

29 MR. LAWLOR: Certainly in presenting the
30 Affidavit of Merits on behalf of the Board itself, did

1 | you consider or were you consulted or were you asked by
2 | Mr. Cauley, who after all was the vice-chairman of the
3 | Board, to prepare both an appearance and an Affidavit
4 | of Merits for him?

5 | THE WITNESS: No, sir.

6 | MR. LAWLOR: Did you speak to him about
7 | this at all?

8 | THE WITNESS: No, sir.

9 | MR. LAWLOR: From whom did you take your
10 | instructions to file an Affidavit of Merits on behalf of
11 | the one and not Mr. Cauley?

12 | THE WITNESS: Either the Chairman or the
13 | Board, sir, I don't recall which.

14 | MR. LAWLOR: Do you remember at any time
15 | having any consultations with the Chairman of the Board
16 | as to what you were to do in this context?

17 | THE WITNESS: I may have had, sir. I
18 | don't recall.

19 | MR. LAWLOR: Well it's very important, Mr.
20 | Lane, that we should know that if it is possible. I
21 | mean you will agree that in acting this way you were in
22 | effect discriminating against Mr. Cauley? You were
23 | telling him in effect to get out and get his own lawyer
24 | and defend himself?

25 | THE WITNESS: No, sir. With respect, there
26 | is a freedom of choice. The individual can retain any
27 | lawyer they like. Rather than my telling someone I
28 | discriminate against them and won't represent them I
29 | suppose the shoe was on the other foot. They chose not
30 | to ask me for my assistance.

1 MR. LAWLOR: Not only the vice-chairman
2 of the Board was involved, normally the vice-chairman
3 of the Board was involved in Board matters and would
4 you not as counsel of the Board be in a position to
5 instruct him, to render your opinion to him personally,
6 to alleviate him from his ills?

7 THE WITNESS: If asked, sir, I would
8 certainly consider it.

9 MR. LAWLOR: You wouldn't of the generosity
10 of your office vouchsafe this information to him?

11 THE WITNESS: No, sir, I think that
12 would be indiscreet.

13 MR. LAWLOR: Mr. Cauley is not a solicitor
14 and Mr. Cauley hasn't got that kind of background and
15 training. Wouldn't you as counsel to the Board be under
16 some obligation to approach him and inform him?

17 MR. DONNELLY: With respect I am hesitant
18 to interrupt but that puts Mr. Lane in a very delicate
19 area in my opinion, in that if there are two defendants
20 and if their claims are adverse in interest, their
21 defences are separate, it could be that Mr. Lane could
22 put himself in a very bad professional position if he
23 sought to advise both of them; but he may put himself
24 in a conflict of interest position.

25 MR. LAWLOR: I quite appreciate that,
26 Mr. Chairman, and I am saying to you, "Was the conflict
27 a possible conflict within the situation ever even mooted
28 in your conversations with Mr. Cauley"?

29 THE WITNESS: Let me put it this way, I
30 had I been asked by Mr. Cauley, and I was not, to

1 represent him I would have felt as a solicitor that I
2 could not. I would have felt that there was a clear
3 conflict of interest and I would have said so. But may
4 I again reiterate that I was not asked.

5 MR. LAWLOR: I notice that Mr. Cauley
6 never did file any documents at all on his own behalf.
7 Did you notice that in the course of the proceedings?

8 THE WITNESS: I don't know that, sir.
9 If you say so, then it must be so.

10 MR. LAWLOR: Coming to the position of
11 Mr. Cross. First of all, did you in taking the
12 Hollingworth affidavit ---

13 THE WITNESS: Sir, I didn't take the
14 Hollingworth affidavit.

15 MR. LAWLOR: Taking the instructions on
16 the affidavit and the one that was responsible to draw
17 it, right?

18 THE WITNESS: I was, sir, yes.

19 MR. LAWLOR: Did you send Mr. Hollingworth
20 off to some other solicitor?

21 THE WITNESS: I may very well have, sir,
22 yes. I knew that Mr. Rest was a solicitor in the
23 building next to us and was the closest solicitor within
24 five blocks who could appropriately swear an affidavit
25 in a contentious matter.

26 MR. LAWLOR: Why would you do that?

27 THE WITNESS: Why would I suggest why he
28 should go next door rather than five blocks?

29 MR. LAWLOR: Right.

30 THE WITNESS: Only because it was closer,

1 | sir.

2 | MR. LAWLOR: And you felt that you would
3 | have to have an independent solicitor to sign that
4 | affidavit or swear it?

5 | THE WITNESS: No, sir, that was the rule
6 | in those days.

7 | MR. LAWLOR: Why then did you not do the
8 | same thing with respect to the affidavit of Miss
9 | Bancroft?

10 | THE WITNESS: The Bancroft affidavit was
11 | not an Affidavit of Merits, sir.

12 | MR. LAWLOR: I appreciate that. Again you
13 | are taking both of these affidavits at the same time,
14 | treating them quite differently with respect to the
15 | procedures of swearing and why was that?

16 | THE WITNESS: Sir, I have lost you.

17 | MR. LAWLOR: Well, you sent one off to
18 | Mr. Rest at the building next door but you felt it was
19 | perfectly compatible to have a senior official and a man
20 | who within the Department swear that affidavit?

21 | THE WITNESS: Sir, the Rules of Practice
22 | of the Ontario Supreme Court at that time provided that
23 | an affidavit^{to}/be filed in the court in a contentious
24 | matter must be sworn outside the offices of the solicitor
25 | acting for that party, thus the requirement that Mr.
26 | Hollingworth's Affidavit of Merits be sworn before a
27 | solicitor in another organization and Mr. Rest was the
28 | closest. Again, Miss Bancroft's affidavit was not an
29 | Affidavit of Merits and it was not intended and I
30 | understand it probably was not in fact filed with the

1 | court in the action and therefore there was no requirement
2 | that it be sworn by an outside solicitor.

3 | MR. LAWLOR: That may be so. But it was
4 | in the same matter and equally contentious. It was
5 | directed to the very same purpose and I wonder why the
6 | difference in approach and attitude. Looking back on
7 | the situation, would you not think it would have been
8 | wiser to send her next door?

9 | THE WITNESS: No, sir.

10 | MR. LAWLOR: Why then didn't you swear
11 | the affidavit personally?

12 | THE WITNESS: I don't know.

13 | THE CHAIRMAN: Mr. Roy?

14 | MR. ROY: What are the dates when the
15 | affidavits were sworn?

16 | THE WITNESS: The Hollingworth affidavit
17 | is sworn on the 2nd day of December, 1965. The Bancroft
18 | affidavit is sworn on the 2nd of December, 1965.

19 | MR. ROY: One of the affidavits you have
20 | explained and that is certainly cleared up in my mind
21 | as to the area of the affidavits. One was necessary
22 | on an Affidavit of Merits and would the other have been
23 | as a written sort of statement sworn under oath?

24 | THE WITNESS: It would have been, sir,
25 | yes.

26 | MR. ROY: Would that have been the idea
27 | at the time?

28 | THE WITNESS: It would have been. If I
29 | recall Miss Bancroft recalled certain -- first gave a
30 | statement and thereafter having an affidavit form, and

1 | if she recalls that I am sure that is what must have
2 | happened.

3 | MR. ROY: I appreciate what you have
4 | said about conflict of interest and about what Mr.
5 | Donnelly has said as well about this particular area,
6 | but I still find it strange. Mr. Cauley in fact was
7 | your superior in the Board; is he not?

8 | THE WITNESS: No, sir. I think that's
9 | probably not quite accurate. The Board is a corporate
10 | entity, and I was one of the four principal officers
11 | of the Board.

12 | MR. ROY: One of the four?

13 | THE WITNESS: Principal officers.

14 | MR. ROY: Along with the ---

15 | THE WITNESS: I was the chief legal
16 | officer and there was the chief medical officer and
17 | there was a number of others and in finance.

18 | MR. ROY: Doesn't it strike you as
19 | somewhat sort of strange atmosphere you were in when
20 | in fact you were drafting an Affidavit of Merits and
21 | you were shifting the blame really on the other
22 | defendant who in fact was a member of the Board.
23 | Wouldn't that create in your mind some strange sort of
24 | atmosphere?

25 | THE WITNESS: I don't agree with the use
26 | of the words "strange". It was embarrassing for the
27 | Board and for Mr. Cauley. I am sure it must have been.

28 | MR. ROY: I appreciate the fact you say
29 | it was embarrassing and yet on your own you say you
30 | never went over to discuss this matter with Mr. Cauley?

1 THE WITNESS: No, sir. I wasn't asked to.

2 MR. ROY: You didn't feel any compulsion
3 to because of the interesting sort of action that this
4 was; in fact this was an action against two defendants,
5 one against defendant being the Board, and the other
6 being a senior officer of the Board, and your Affidavit
7 of Merits in fact shifted the blame on a senior officer
8 of the Board, a fellow you had to work with.

9 THE WITNESS: With, yes.

10 MR. ROY: You didn't feel any compulsion
11 on your own to maybe go over and discuss this with him?

12 THE WITNESS: I think I was asked this
13 before and I said I didn't think it really would be a
14 discreet thing to do and I was employed by the Board,
15 by the entity of those three men. There was an obvious
16 conflict between that entity and one of them, one of
17 the people that made up that entity, and one of them
18 employed me and I worked for it, the organization and I
19 was hired or retained or whatever you like; I was the
20 defendant solicitor for the Board. It would be a conflict
21 of professional interest to discuss with another defendant
22 candidly, and as I said, had I been asked I would have
23 found I hope a polite way to decline.

24 MR. ROY: You see, I appreciate the
25 legal niceties of the situation but you are dealing in
26 fact with human beings, and you have a fellow, Mr. Cauley,
27 who is a senior officer of the Board was around there;
28 you had to face him sort of the next day, didn't you?
29 You met him since or following this particular drafting
30 of the affidavit?

1 Have you met him since that time?

2 THE WITNESS: Have I seen Mr. Cauley
3 since?

4 MR. ROY: Yes.

5 THE WITNESS: Oh yes.

6 MR. ROY: And have you never discussed
7 this situation with him?

8 THE WITNESS: No.

9 MR. ROY: That's all I have.

10 THE CHAIRMAN: Are there any other non-
11 members that would like to question the witness?

12 MR. MARTEL: Just a very brief question
13 if I might. If there was no intention to use or file
14 Miss Bancroft's affidavit, how was it taken?

15 THE WITNESS: I don't really know. I
16 heard Miss Bancroft give the explanation that the Board
17 asked her for a statement and that it was subsequently
18 made into an affidavit. Why I don't recall, and
19 apparently neither does she.

20 MR. MARTEL: Nobody seems to know why
21 with respect to what has gone on with these affidavits.
22 A lot of people can't remember anything. I realize the
23 time factor but I think it's important. You know, here
24 is an affidavit, one that's going to be used, it's file
25 in the courts and another one taken, no one knows why
26 and there has got to be a reason why it was taken. It
27 wasn't just for something to do. I get a little upset
28 and I'm not saying you, but the "snow job" I see
29 happening and I call it that because there has got to
30 be a reason why that bloody affidavit was taken. Some

1 wanted something for some reason. Now someone must
2 bloody well know why.

3 Now we just keep going around in circles
4 because everybody knows nothing. We talk about
5 professional people.

6 That is all, Mr. Chairman.

7 THE CHAIRMAN: Have you completed, Mr.
8 Martel?

9 MR. MARTEL: I am completed.

10 THE CHAIRMAN: I believe there is some
11 further questioning.

12 MR. MILLER: I just have one. I want
13 to check a question attributed to you, Mr. Lane, on
14 Page 35 of the first transcript. Mr. Cauley is quoted
15 as saying, "when I called Eric Lane he blamed
16 Chairman Legge for the affidavit. He said
17 that he had to do it under Legge's instructions and he
18 said to me, 'You don't know if you cross that fellow
19 up what would happen to you'." Does that sound like a
20 quotation you would have made?

21 THE WITNESS: I don't remember making it,
22 sir.

23 MR. MILLER: Does it sound like a quotation
24 you would have made?

25 THE WITNESS: I don't remember making it,
26 sir, other than that it is completely speculative as
27 to whether or not one, two, three or four of those
28 words may have been mind some time. I do not remember
29 making the statement.

30 MR. MILLER: I am being prompted by the

1 opposition sometimes and it's nice to be helped.

2 MR. ROY: We do play some role.

3 MR. MILLER: Did you have any reason
4 to make a comment like that?

5 THE WITNESS: Not that I know of.

6 THE CHAIRMAN: Mr. Deans?

7 MR. DEANS: Was there a meeting of the
8 Board to decide what action had been taken as a result
9 of the claim by Mr. Campbell?

10 THE WITNESS: I don't recall one, sir.
11 There may have been. I recall other people say that
12 there was and if they remembered then there was.

13 MR. DEANS: I am right that you were the
14 secretary of the Board?

15 THE WITNESS: Yes, sir.

16 MR. DEANS: You attended all of the Boar
17 meetings?

18 THE WITNESS: No, sir.

19 MR. DEANS: What did you do as secretary
20 of the Board?

21 THE WITNESS: I attended some of the
22 Board meetings.

23 MR. DEANS: Were you expected to be at
24 all of the Board meetings?

25 THE WITNESS: No, sir.

26 MR. DEANS: Were there minutes kept of
27 all of the Board meetings?

28 THE WITNESS: Not all, sir. Some.

29 MR. DEANS: Would you have been in
30 attendance at a meeting held to decide what action should

1 | be taken in regard to the claim by Mr. Campbell?

2 | THE WITNESS: Miss Bancroft testified before
3 | you gentlemen that she thinks that I was. I don't remember
4 | being; I may have been.

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26-1

1 MR. DEANS: Would the Board have consulted
2 you as to what actions would be taken as regard the
3 claims?

4 THE WITNESS: Would they?

5 MR. DEANS: Did they consult you in
6 actions such as this type?

7 THE WITNESS: I don't recall being consulted
8 but I think, to be fair to you, sir, that I would have
9 I am sure they did but I do not specifically recall the

10 MR. DEANS: When you were consulted by the
11 Board, did you have a practise of maintaining a record of
12 such consultation?

13 THE WITNESS: No.

14 MR. DEANS: You simply relied on your memory
15 to carry you from day to day?

16 THE WITNESS: I don't really follow that

17 MR. DEANS: When you were called in on a
18 matter such as this -- let's be fair about this. This
19 wasn't a routine matter, it wasn't simply a claim by an
20 injured workman or it wasn't a counterclaim by an employee
21 it was a matter of some considerable significance both to
22 the Board and to its operation and to the morality of the
23 Board; would you agree? I am talking about the Board
24 itself, I am not talking about the whole operation.

25 THE WITNESS: Sir, with respect to the
26 work that was being conducted by the Workmen's Compensation
27 Board at that time, it was a bloody insignificant matter.
28 The Compensation Board was involved then, as it is now,
29 in serious, extensive good work. This is, in my view,
30 pretty little sideline.

2 1 MR. DEANS: I would have said the same
3 2 thing at one point except that to me it is an indication,
4 3 if I may say so, of the cancer below the sore; that it is
5 4 small -- I say it's insignificant and I think I said that
6 5 earlier, I thought that to go to such trouble over such
7 6 a thing, considering the evidence that we now have, was
8 7 rather small minded. But nevertheless, I ask you, as
9 8 the solicitor for the Board, the person who was responsible
10 9 for advising them on legal matters, whether you were asked
11 10 for an opinion as to whether the Board should proceed in a
12 11 counter-action because of the fact that (A) the Board was
13 12 being sued, (B) The Vice-Chairman was being sued and in
14 13 fact the action, as you say was a rather insignificant
15 14 thing.

16 THE WITNESS: Sir, as I said before, I have
17 no direct recollection. I can only say this based on my
18 experience, that if I was consulted, and I am sure I was,
19 I would outline to whoever sought my advice the two
20 courses that were open. We have been sued. We could
21 either settle that action or we could fight it. There
22 were obvious embarrassing moments for the parties in
23 either course and they could choose as they saw fit. I
24 would do whichever they would like to have done.

25 MR. DEANS: Do you believe you were asked
26 by the Board for that opinion?

27 THE WITNESS: Yes, sir, I probably was.

28 MR. DEANS: By the full Board?

29 THE WITNESS: I can't say that accurately
30 because I don't recall the situation.

MR. DEANS: Is there any way that we can

26-3

1 find out?

2 THE WITNESS: What is that, sir?

3 MR. DEANS: Whether or not you were in
4 asked by the full Board for your legal opinion as to wh
5 course of action should be followed.

6 THE WITNESS: I don't know.

7 MR. DEANS: Is there anyone who knows?

8 THE WITNESS: I don't know. You might
9 the people who were there. Other than that, I can't o
10 you any help or suggestions.

11 MR. DEANS: This is a pretty shoddy oper
12 when you can't find the answers. It is a pretty strang
13 operation when you can't find when decisions of the Bo
14 are made and you can't find out that those decisions w
15 actually made by the Board.

16 As the Secretary for the Board, as the
17 for the Board, doesn't it strike you as odd that decis
18 can be made about the operations of the Board and suit
19 against a member of the Board and there isn't any reco
20 of the decision having been taken?

21 THE WITNESS: I am sorry, are you asking
22 me?

23 MR. DEANS: Yes, I am asking you, don't
24 you think it's unusual that there is no record of any
25 decision being made in regard to the claim against the
26 Board and the Vice-Chairman considering?

27 THE WITNESS: I don't know whether ther
28 is a record or there isn't, sir. If you ascertain tha
29 there is no record ---

30 MR. DEANS: I am asking you, since you

4
1 the Secretary of the Board.

2 THE WITNESS: Whether I kept one or whether
3 one was kept?

4 MR. DEANS: Whether there was a record kept
5 by the Board.

6 THE WITNESS: I don't recall being in that
7 meeting, sir, as I have said to you; as Secretary I only
8 attended some of the meetings. The ones where formal
9 records and/or formal decisions which were recorded were
10 kept because I was involved with the preparation of those
11 minutes and the keeping of those records. If in fact I
12 was and if there was in fact a record made, then it is
13 probably still in existence. What I am saying to you,
14 sir, is I don't remember if in fact one was made or if
15 I made it.

16 MR. DEANS: May I ask you this, since you
17 don't remember that. Could you tell me where the record
18 would be if we went to look for it?

19 THE WITNESS: I haven't the vaguest idea
20 now. I have been away from there for some time.

21 MR. DEANS: What was the purpose of keeping
22 records? Did you have them scribbled down by a secretary
23 and keep them in a file or did you have a record book of
24 the minutes of the Board meetings that you attended or
25 how were records kept?

26 THE WITNESS: There were two basic methods
27 of recording the results of decisions of the Board. When
28 claims matters were being considered, there was always a
29 file and the Board's decision was recorded and punched on
30 that file. If it was so lengthy that I couldn't handwrite

26-5

1 | it and have the Board sign it and thereafter type it u
2 | and add it to it legibly, then there was a formal sign
3 | ceremony sometime the next day when I had come around
4 | signed orders that were lengthy with respect to a deci
5 | When administrative matters were being considered and
6 | decided by the Board, there were sometimes prepared Bo
7 | orders, administrative orders, to be more accurate,
8 | administrative orders that were then sent around to th
9 | departments that needed them to the action. By the ti
10 | the action came, administrative matters that came to ta
11 | Board came on a presentation and the Board's practise
12 | keep the flow of paper to a minimum wherever possible
13 | was to require that submissions come to them in a form
14 | that was capable of saying "agree submission three" an
15 | three sets of an issue. That is the type of thing tha
16 | encouraged. The various senior officers that wanted t
17 | bring matters to the Board, they had to bring them thro
18 | me and I encouraged that sort of preparation so that te
19 | could be a succinct organization and a record kept of h
20 | we did. This sort of a matter didn't or doesn't reall
21 | fit either of the two main areas of business that the
22 | Board was ordinarily involved with and I can't readily
23 | conceive that there was a discussion of which no forme
24 | record was kept. If I was there as the Board's genera
25 | counsel and was asked, I would have outlined the two se
26 | the two things the Board could do. They could settle t
27 | or they could fight it. I am sure then if I was told, "
28 | will fight now and consider settlement later," but I ra
29 | didn't need that in writing, I was quite capable of go
30 | away and acting on those instructions. I am sure that I

1 was given instructions to file an Affidavit of Merits; I
2 am only sure of that because I filed them. I can't be
3 more explicit than that.

4 MR. DEANS: But you weren't sure who gave
5 you the instructions?

6 THE WITNESS: No.

7 THE CHAIRMAN: Mr. Mack?

8 MR. MACK: Mr. Lane, you worked for the
9 Board two years?

10 THE WITNESS: Approximately.

11 MR. MACK: Why did you leave the Board?

12 THE WITNESS: To go to private practice.

13 MR. MACK: Were there any extenuating
14 circumstances regarding this dissention we have been
15 talking about that prompted you to look for a private
16 practice?

17 THE WITNESS: No, sir.

18 MR. MACK: None at all?

19 THE WITNESS: No, sir.

20 THE CHAIRMAN: The counsel for Mr. Cauley,
21 does he wish to question the witness through Committee
22 Counsel?

23 MR. HUMPHREY: I just have one question.

24 THE CHAIRMAN: Committee Counsel has persuaded
25 counsel for Mr. Cauley his question isn't worthwhile.

26 Is that all we have for this witness,
27 Mr. Donnelly?

28 MR. DONNELLY: I have no further questions
29 of the witness, thank you.

30 THE CHAIRMAN: Thank you, Mr. Lane. Thank

26-7

1 | you for being so helpful to the Committee.

2 | We will adjourn until 10:00 tomorrow
3 | morning.

4 |
5 | --- Upon adjourning at 10:30 p.m.

6 |
7 |
8 | CERTIFIED CORRECT:

9 |
10 | REPORTER 

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4	15 - 16.	Copy of Appointment Calendar for the month of April.	41
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6	17.	Letter from A. Whitmore to the Vice-Chairman, dated May 12th, 1969.	41
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8	18.	Minute page 3519, November 13th, 1967.	43
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10	19.	Letter dated February 19th, 1968 from the Chairman of the Board to Mr. Bales, Minister of Labour.	44
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20	24.	Letter with attached documents to Mr. Cauley from Mr. Bales, dated August 19th, 1971.	51
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22	25.	Letter from Mr. Bales to Mr. Cauley, dated August 30th, 1971.	51
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24	26.	Inter-departmental communication to Mr. MacDonald from Mr. Hollingworth, dated November 23, 1965.	52
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28	28.	Inter-departmental communication to Personnel Department from Mr. Cauley, dated May 30th, 1966.	54
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30	29.	Inter-departmental communication to Personnel Department from Miss A. Whitmore, dated July 23, 1966.	55

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4	31.	Inter-departmental communication to Personnel Department from A. Whitmore, dated March 20th, 1967.	55
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6	32.	Inter-departmental communication to the Board from Mr. Cauley, dated March 20th, 1967.	56
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14	36.	Inter-departmental communication to Personnel Department from A. Whitmore, dated August 4th, 1967.	57
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16	37.	Inter-departmental communication to Mr. Legge, Mr. Johnston, Mr. Poole, from Mr. Cauley, dated April 3rd, 1968.	58
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1 --- Upon commencing at 10:15 a.m.

2 THE CHAIRMAN: I call this meeting to
3 order. The Clerk has taken the attendance role and we
4 will resume where we left off last night and have
5 Committee Counsel call his first witness.

6 MR. DONNELLY: Mr. Chairman, if I may be
7 permitted, there is a preliminary matter that I would
8 like to address the Committee on; it is this: towards
9 the close of yesterday evening's hearings there was a
10 comment made by one of the honourable members that as a
11 result of which it was only with considerable self
12 restraint that I was able to bestow the charity of
13 silence. Now I don't conceive it to be within the
14 ambit of my appointment to enter into any debate of
15 any kind and further, I think that such conduct would
16 reduce or eliminate any chance that I may have of rendering
17 assistance in the search for the facts. However,ⁱⁿ deter-
18 mination of my duties with you, if you permit me I will
19 have an observation to make which I will hope might be
20 of benefit to this and to other Committees.

21 Now there is a second matter that I
22 would like to address you on, and that is on instructions
23 from one of the Committee members I have caused to be
24 subpoenaed for this morning about a dozen witnesses
25 and I think the most of them are here and having regard
26 to the sequence that I propose following it may be that
27 they won't be reached today and possibly they could be
28 excused or given the opportunity to leave if they wish.
29 I wish to make it clear they are perfectly at liberty
30 to stay, but if it is your Committee's wish I think they

1 could certainly be excused until tomorrow, or possibly
2 even beyond that. I follow your own direction on that
3 matter.

4 THE CHAIRMAN: You feel you would not be
5 getting to them today?

6 MR. DONNELLY: I am as confident as I can
7 be that we won't reach them today, sir.

8 THE CHAIRMAN: Is it the wish of the
9 Committee that we allow these witnesses to be excused?

10 They are excused if they wish.

11 MR. DONNELLY: The names of the witnesses
12 subpoenaed for this morning were Dr. York, Mr. Taniant,
13 Dr. Alexander, Mr. Tater, Mr. Dove, Mr. Dowdy, Mr.
14 Chappell, Mr. Larkin and a Mary Roderick, and then the
15 name (Bishop), Dr. Johnston, Donald Brown and Mr.
16 Biseman.

17 With your permission, sir, I will call the
18 first witness, Mr. Cross please.

19 THE CHAIRMAN: (Swears the witness).

20 W. BASIL CROSS, sworn:

21 EXAMINATION BY MR. DONNELLY:

22 Q. Your full name, sir?

23 A. William Basil Cross.

24 Q. Would you mind telling me your
25 age, sir?

26 A. Well, that is a sore point.

27 Q. Confidential?

28 A. I don't like to admit it. I am 75.

29 Q. And are you retired now, sir?

30 A. Yes.

1 Q. And retired from what?

2 A. From employment, full employment and
3 then part time employment as a Commissioner pro tempore for
4 the Board.

5 Q. All with the Compensation Board?

6 A. Yes.

7 Q. And are you a solicitor, sir, also?

8 A. Yes.

9 Q. And in your employment of the Board
10 in recent years were you employed as a solicitor or in
11 some other capacity?

12 A. I was employed by the solicitor for
13 the Board on legal work until I went on pension in 1961.
14 After that I was employed on a year to year basis on
15 special jobs and I think I worked on special jobs up
16 until 1967.

17 Q. And were those special jobs legal
18 in nature or in connection with the legal department, sir?

19 A. Well, some of them were and some of
20 them were not.

21 Q. And the year 1965, this was your
22 position, working on the Board, some special jobs, some
23 legal and some not legal?

24 A. Yes, at that time I was working half
25 time and I was on a special job. Also around December
26 or November I was ill with a back injury for I think two
27 weeks on one occasion, and I went back to work too soon
28 and ten days after that.

29 Q. Sir, you were present in the Committee
30 room yesterday, were you, when you heard the discussions?

1 A. Yes.

2 Q. And evidence has been given about a
3 certain affidavit, sir. Have you had an opportunity of
4 seeing that affidavit?

5 A. I saw a copy. I haven't seen the
6 original I don't think.

7 Q. And are you able to identify the
8 signature on there, sir?

9 A. Yes. This is a copy too, but that
10 is my signature.

11 Q. Rather than start with the incident
12 in 1965, I think I would rather reverse the order and
13 ask if you could tell us about the incident that happened
14 I think perhaps in 1968 or something at your home and
15 then we will come back to 1965 perhaps.

16 A. The affidavit was December 2nd,
17 1965. In 1968 Mr. Cauley came to my house; is that what
18 you mean?

19 Q. Yes, if you would. Did you make
20 some record as to the interview in 1968, sir?

21 A. Yes, immediately after Mr. Cauley
22 left I sat down and wrote out as much as I could remember
23 of everything that happened.

24 Q. Can you tell us from your record
25 and from your recollection what did occur in that interview
26 in 1968 at your home?

27 A. I don't understand the question.

28 Q. Using the record you made and your
29 own recollection, tell us about that 1968 interview.

30 A. Well, Mr. Cauley two or three times

1 said that he wanted to come up to the house and discuss
2 the affidavit and one day or one afternoon he phoned and
3 made an appointment for the next day and he did come up.

4 Q. When he got there, sir, what
5 happened?

6 A. Well, we discussed the affidavit.
7 The point he came for was to see if I drew the affidavit.
8 I was very hazy in talking to him. I didn't think I
9 drew the affidavit in my conversation, but he brought it
10 up to see if I had.

11 Q. Do you have your own original hand-
12 written memorandum of conversation?

13 A. Yes, I have.

14 Q. Could you read it into the record
15 and file it as an Exhibit please?

16 A. "At 53 Chelford Road, Don Mills,
17 Friday, November 29th, 1968, Mr. John
18 Cauley, Vice-Chairman, telephoned yesterday
19 afternoon stating he wished to come here
20 with an affidavit which Florence Bancroft
21 swore before me in 1965 for me to examine
22 and say if I prepared it. He called here
23 this morning after having been driven here
24 in a W.C.B. car. The affidavit was in
25 the action Gerald Campbell versus W.C.B.
26 (I am not quite sure of the plaintiff's
27 name) dated December 2nd, 1965, and
28 contained several paragraphs on two pages
29 regarding Florence's and Jack Hollingworth's
30 connection in the order and delivering of

1 certain pictures. I told Mr. Cauley that
2 I took the affidavit but did not prepare
3 it, but as was my custom I either asked
4 Florence to read it or I read it to her
5 and she said it was true before I
6 attempted to swear it. I told him that
7 I knew nothing about Florence being upset
8 about it and afterward going to Dr.
9 Steele's office in a state of collapse
10 followed by ten days off sick. (Mr.
11 Cauley stated that Florence had stated
12 that Mr. Lane had told her she must sign
13 the affidavit or be fired.) Mr. Cauley
14 stated he had paid \$500.00 in regard to
15 the action in order to save Jack
16 Hollingworth from being fired in connection
17 with the ordering and delivering of the
18 portraits. He also stated that portraits
19 were still in his office unused and that
20 as soon as a new member of the Board is
21 appointed he is going to seek to get his
22 money back. Further he stated the Board
23 had paid in the interval from 1965
24 \$1,200.00 less the \$500.00 he paid for
25 pictures of himself, whereas the Board
26 had paid \$4,000.00 for pictures of the
27 Chairman in this period without a Board
28 order for that. He asked that I give him
29 an affidavit but I did not prepare the
30 affidavit. I declined. He then asked for

1 a written statement but I again declined.
2 I told him, though, that I was at any
3 time prepared to state that I did not
4 prepare it. This memo was written imme-
5 diately following Mr. Cauley's departure,"
6 and the main part was signed and I initialled the part
7 in the margin. I ran out of space.

8 Q. May that be entered as an Exhibit,
9 sir?

10 A. Yes.

11 ---EXHIBIT NO. 56: Handwritten memo by Mr. Cross of his
12 interview with Mr. Cauley in 1968.

13 MR. DONNELLY: Q. Does that exhaust your
14 particular recollection of that particular incident, sir?
15 I am referring to 1968.

16 A. Yes, it does. Everything was frank
17 at that meeting. I wasn't accused of anything.

18 Q. Was there any mention of perjury or
19 swearing of false documents or anything of that kind?

20 A. I am satisfied that if perjury was
21 mentioned I would have recorded it.

22 Q. In the note that you have filed you
23 are saying?

24 A. Yes.

25 Q. And apart from being satisfied of
26 that, do you have any recollection of it being mentioned?

27 A. No.

28 Q. I want to direct your mind back then,
29 sir, to 1965 in December, that is, the time of the swearing
30 of the affidavit. I suppose you would know Miss Bancroft
at that time, would you?

1 A. Yes, indeed. I knew her for many
2 years.

3 Q. I think she told us yesterday that
4 she worked with you or for you or something of that nature?

5 A. Yes.

6 Q. Do you recall the circumstances of
7 the swearing of the affidavit, sir?

8 A. I do. I recall having sworn her.
9 I don't recall exactly what office it was in. At that
10 time, they were moving offices around in the Board there,
11 and they were making new offices and so on and I moved
12 from place to place, but I do remember swearing her in
13 the Board's -- on the fourth floor of the Board's offices.

14 Q. I am going to go back again just a
15 bit more. Do you remember the incident of the swearing;
16 do you remember any of the circumstances that led up to
17 you taking part in the swearing; why you? Do you remember
18 anything about that?

19 A. I think Mr. Lane asked me if I would
20 swear an affidavit. I am not positive of that.

21 Q. At that time, sir, did you have any
22 knowledge of the circumstances in which the affidavit
23 was being taken?

24 A. Yes. At the time I saw Mr. Cauley
25 I wasn't sure if I asked her to read it or if she had
26 read it.

27 Q. I may have led you there. I meant
28 did you have any knowledge that Mr. Lane came to you and
29 said, "Will you swear the affidavit?" Did you know then
30

1 about this dispute about portraits and pictures with the
2 Board and Mr. Cauley?

3 A. No.

4 Q. When you actually went to swear the
5 affidavit did you have any personal knowledge of that
6 incident or trouble or whatever it may be called?

7 A. No. I knew of the action by the
8 style of cause.

9 Q. The style of cause is the descriptive
10 wording on the top of the affidavit?

11 A. Yes.

12 Q. But apart from seeing that on the
13 affidavit, did you have any prior knowledge of either
14 the lawsuit itself or the facts that gave rise to the
15 lawsuit?

16 A. No, not at that time.

17 Q. And on seeing the style of cause did
18 you recognize your Mr. Cauley as being the defendant?

19 A. I am not sure of that.

20 Q. Did you make any inquiry of the
21 nature of the action at that time?

22 A. No, I didn't. I asked her if it were
23 true and I swore her as I recollect now.

24 Q. You say you asked her if it were
25 true and then swore her as you recollect now?

26 A. Yes.

27

28

29

30

1 Q. Is there anything irregular or
2 improper of the taking of the affidavit that you recall,
3 sir?

4 A. No.

5 Q. Do you recall what person or per-
6 sons were present there?

7 A. I don't know if anyone was present.
8 I think Miss Bancroft said yesterday it was sworn ---

9 Q. When you say you don't know anyone
10 was present, there may have been others that you were
11 not aware of or what do you mean?

12 A. Mr. Lane may have been present, I
13 don't know.

14 Q. As you recall it was there any
15 element of compulsion or intimidation or threat or
16 anything of that nature?

17 A. None whatsoever. None on me or
18 none on Miss Bancroft.

19 Q. Touching on the matter of any
20 falsity of the contents of the document, that there
21 were false documents being sworn, as you recall it was
22 there anything of that nature, sir?

23 A. No.

24 THE CHAIRMAN: Mr. Lawlor has a question
25 at this time.

26 MR. LAWLOR: Not now.

27 MR. DONNELLY: Q. Do you have any other
28 recollection of the swearing of the document itself,
29 sir?

30 A. Well, I think she said she read it

1 or had read it and I know I asked her if it were true so
2 help you God and I then asked her to sign it and I
3 signed it myself.

4 Q. Now do you have any knowledge of
5 what happened after the actual document was signed?

6 A. No; no.

7 Q. Do you know anything about Miss
8 Bancroft being upset or hysterical or anything of that
9 nature?

10 A. None whatever.

11 Q. Was there any evidence of that when
12 she was in your presence?

13 A. No, none that I detected. It only
14 took a very few minutes.

15 Q. Do you recall whether you saw her
16 later that day or not?

17 A. No, I didn't.

18 MR. DONNELLY: Some of the other members
19 may have some questions of you, sir, please.

20 THE CHAIRMAN: You have completed?

21 MR. DONNELLY: Yes.

22 THE CHAIRMAN: Members of the Committee?

23 MR. MILLER: I would just like to check
24 the one direct quotation in the testimony and that
25 is that Mr. Cauley said to you or is quoted as saying
26 to you, "Basil, what are the circumstances that you
27 would compel someone to commit perjury?" and he says
28 he said that to you.

29 THE WITNESS: Would you mind reading the
30 next sentence?

1 MR. MILLER: "And he said, 'I don't ask any
2 questions'."

3 THE WITNESS: I intended to bring that
4 up myself. I don't think the word "perjury" was
5 mentioned at our house. If it was I was certainly not
6 implicated in it. It was a friendly meeting so far as
7 I was aware throughout and you notice there in the
8 second sentence that the tense changes.

9 MR. MILLER: Past to present?

10 THE WITNESS: Yes. Now, that indicates
11 to me that there was reflection on me something to the
12 effect that it was my habit of causing a crime or per-
13 jury. Now there was nothing of that.

14 MR. MILLER: Then as far as you can
15 remember, this suggestion or this statement that he
16 says he made to you was not made in your presence?

17 THE WITNESS: Yes. I mean it was not
18 made, no. The word "perjury" may have been mentioned,
19 I can't say that it wasn't, but I know that I wasn't
20 implicated in it in any way. He didn't accuse me of
21 causing perjury I am positive.

22 MR. MILLER: This statement would accuse
23 you of aiding perjury, wouldn't it?

24 THE WITNESS: Yes.

25 MR. MILLER: That is all I have, Mr.
26 Chairman.

27 MR. DEANS: Mr. Cross, just to clear up
28 in my mind, you knew Miss Bancroft well?

29 THE WITNESS: Yes.

30 MR. DEANS: Did you see her from day to

Cross,

1 day prior to the signing? You saw her fairly regularly,
2 did you?

3 THE WITNESS: Well, I can't say that
4 around the time of 1945. I was working at half time.

5 MR. DONNELLY: 1965, sir.

6 THE WITNESS: I'm sorry, 1965. She was
7 in another department and any time I would see her
8 would be in the cafeteria or in the hall. We had no
9 business connections at that time.

10 MR. DEANS: Was there never any discussion
11 around the Board or with the Board members about Miss
12 Bancroft being upset over the incident?

13 THE WITNESS: No.

14 MR. DEANS: To your knowledge?

15 THE WITNESS: No. Mr. Cauley's appearance
16 at our house ---

17 MR. DEANS: Some years later.

18 THE WITNESS: --- was when I found out
19 about that.

20 MR. DEANS: That was some years later?

21 THE WITNESS: Yes, 1968.

22 MR. DEANS: Sir, how many people were
23 involved in the Legal Department in 1965 at the time
24 you signed the affidavit; can you recall? There was
25 Mr. Lane and yourself and how many others would there
26 be?

27 THE WITNESS: There was Joe Simpson and
28 there must have been others, but I wasn't attached to
29 the Legal Department then. I was in the Executive
30

Cross,

1 Department, a special job and I actually wasn't doing
2 a legal job at this time.

3 MR. DEANS: Mr. Lane said yesterday and
4 I'm not quoting him verbatim, but I recall him saying
5 that you had remained with the Board because you had
6 knowledge that was of value to the Board. I wondered
7 whether or not it was the practice of the Legal
8 Department to consult you on matters?

9 THE WITNESS: Yes, from time to time I
10 gave background of things that were happening.

11 MR. DEANS: Would you consider it to be a
12 routine matter to swear out an affidavit which involved
13 an action against the Board and an independent action
14 against the vice-chairman of the Board?

15 THE WITNESS: Not under these circumstances.
16 This affidavit was, I consider, part of the pleadings
17 for purposes of settlement. If Miss Bancroft or Mr.
18 Hollingworth had have been required for trial they
19 would have had to testify and it was just a matter of
20 serious record.

21 MR. DEANS: The point of course is that
22 having once sworn the affidavit, the affidavit itself
23 could have been used to ensure that the testimony given
24 at the trial was at least in keeping with the statements
25 given at the time of the swearing of the affidavit?

26 THE WITNESS: That is possible.

27 MR. DEANS: That is generally speaking to
28 assure that there isn't any change of mind or slip of
29 memory?

30 THE WITNESS: Well, I am not sure of that,

1 but it is possible.

2 MR. DEANS: You mentioned, sir, that you
3 didn't notice or you can't recall noticing that the
4 action -- the plaintiff was Gerald Campbell and the
5 action was against the Board and Mr. Cauley?

6 THE WITNESS: Well I am not sure when I
7 saw the affidavit that I saw that. I certainly knew it
8 was against the Board and I imagine that I knew it was
9 against Mr. Cauley too, but I can't be sure. I knew
10 there was an action started.

11 MR. DEANS: Did you read the affidavit?

12 THE WITNESS: No.

13 MR. DEANS: You did not read it?

14 THE WITNESS: No.

15 MR. DEANS: You simply asked Miss Bancroft
16 to read it and accept it?

17 THE WITNESS: I asked her if she had
18 read it and I was just taking her oath and I didn't
19 question her about the contents of the affidavit.

20 MR. DEANS: Thank you.

21 THE CHAIRMAN: Are there any other Committee
22 members that have questions of the witness?

23 MR. GAUNT: Mr. Chairman, may I ask a
24 question?

25 Mr. Cross, you swore the affidavit for
26 Miss Bancroft. Were you asked to swear the affidavit
27 for Mr. Hollingworth?

28 THE WITNESS: No.

29 MR. GAUNT: Was there any reason in your
30 view why you weren't?

1 THE WITNESS: I didn't have any reason
2 given to me, no. But Mr. Hollingworth, his affidavit
3 was filed in the pleadings. There was no need of filing
4 the affidavit, it was in the pleadings. I learned that
5 subsequently of course.

6 MR. DONNELLY: If it's any help, Mr. Gaunt,
7 with reference to the filing and pleading I think it
8 means it was filed in the court office if that is any
9 help, the terminology used by the witness.

10 MR. GAUNT: All right.

11 THE CHAIRMAN: Other members?

12 Mr. Lawlor?

13 MR. LAWLOR: I couldn't hear very well
14 what answer he gave Murray Gaunt on that last question
15 but you did indicate when the affidavit was taken that
16 so far as you were concerned it was for the purposes
17 of pleading as I understood it and you went on further
18 and for settlement purposes?

19 THE WITNESS: It might have been, right.

20 MR. LAWLOR: That wasn't discussed in
21 your presence or you weren't signing the affidavit with
22 that kind of knowledge?

23 THE WITNESS: No.

24 MR. LAWLOR: Was it normal routine for you
25 to take affidavits from personnel?

26 THE WITNESS: I did it many times in many
27 connections, yes.

28 MR. LAWLOR: Never took an affidavit or
29 did you from Miss Bancroft previously?

30 THE WITNESS: No.

1 MR. LAWLOR: You don't have to go into it,
2 but you were a lawyer of the Board at the very time of
3 taking the affidavit?

4 THE WITNESS: No, I wasn't employed in the
5 Legal Department as a lawyer. I was employed but for
6 special jobs. Mr. Lane indicated yesterday he wanted
7 me there so I could advise him and I did advise him.
8 But it wasn't legal matters particularly he wanted
9 advice on, it was about how things were handled and all
10 sorts of questions about the workings of the Act so far
11 as the Board went.

12 MR. LAWLOR: And would there be the odd
13 legal matter come up too?

14 THE WITNESS: I don't recall any at this
15 time.

16 MR. LAWLOR: Well now, you have indicated
17 that you weren't too clear perhaps, but you can't recall
18 as to whether Mr. Lane came in with Miss Bancroft,
19 whether she brought the affidavit in alone or just
20 precisely what the circumstances were for coming into
21 your office?

22 THE WITNESS: It was Mr. Lane I said. I
23 am not sure but I think he telephoned and said, "Miss
24 Bancroft is coming to your office to sign an affidavit,"
25 but I am not clear on that. I don't remember except
26 that she did sign the affidavit and I took it.

27 MR. LAWLOR: You can't remember whether
28 she brought the affidavit in with her?

29 THE WITNESS: No, I can't. I think she
30 indicated yesterday that she did.

1 MR. LAWLOR: Did she when she came into
2 your office -- you indicated earlier that she read the
3 affidavit herself in your presence or you read it to her.
4 Did she appear to be perfectly composed?

5 THE WITNESS: I didn't read the affidavit
6 to her.

7 MR. LAWLOR: Would she then have read it
8 herself?

9 THE WITNESS: Yes. I asked her if she
10 had read it as I remember and she said she had and she
11 appeared entirely composed.

12 MR. LAWLOR: You say that Mr. Cauley
13 called you on the telephone two or three times prior to
14 coming to your home?

15 THE WITNESS: Well, I don't know whether
16 it was on the telephone or not. He mentioned two or
17 three times he would like to come over. I don't recall
18 where or when he did.

19 MR. LAWLOR: Did he seem to you to be
20 somewhat disturbed about the matter?

21 THE WITNESS: No, I don't think that. He
22 wanted to talk to me about the affidavit.

23 MR. LAWLOR: When was the first time the
24 word "perjury" came up?

25 THE WITNESS: I don't know. I don't think
26 it came up in 1965 although I can't be sure of that, but
27 it certainly didn't involve my participation in it in
28 any way.
29
30

1 MR. LAWLOR: Thank you, Mr. Chairman.

2 THE CHAIRMAN: Anyone else?

3 Has Mr. Counsel completed?

4 MR. DONNELLY: Counsel is with Mr. Cauley
5 and he indicates he has no questions.

6 Is that correct Mr. Humphrey?

7 MR. HUMPHREY: Yes.

8 THE CHAIRMAN: Have you completed your
9 examination?

10 MR. DONNELLY: Yes.

11 THE CHAIRMAN: Thank you, Mr. Cross, in
12 helping the Committee.

13 MR. CROSS: May I say something?

14 THE CHAIRMAN: You may.

15 MR. CROSS: I am a retired solicitor of the
16 Law Society. I have never had any suggestion of malpractice
17 or dishonesty or anything like that impuned of me before.
18 I am hopeful, in view of the things that have been said
19 yesterday here and today, that Mr. Cauley will see fit to
20 retract that implication.

21 THE CHAIRMAN: Thank you, Mr. Cross.

22 MR. DONNELLY: Your remarks have been noted
23 and your attendance is very much appreciated, sir. Thank
24 you very much.

25 Mr. Rest, please?

26 THE CHAIRMAN: (swears the witness)

27
28 WILLIAM B. REST, Sworn:

29 MR. DONNELLY: Q. Your full name, sir?

30 A. William B. Rest.

1 Q. You are a solicitor, are you?
2 A. I am.
3 Q. You are presently employed where?
4 A. Toronto Harbor Commissioners.
5 Q. Where?
6 A. As solicitor.
7 Q. How long have you been there, sir?
8 A. Since 1961.
9 Q. The address of the building where you
10 work?
11 A. Ninety Harbor Street.
12 Q. In 1965 was your office in the
13 90 Harbor Street building?
14 A. Yes, on the second floor.
15 Q. And you also were present yesterday
16 and today waiting your turn to give evidence under
17 subpoena; is that right?
18 A. Yes, in the afternoon yesterday and
19 evening.
20 Q. Now you have heard the evidence, I
21 suppose, this morning, by the witness Hollingworth and
22 Bancroft yesterday as to these affidavits?
23 A. Yes.
24 Q. Tell me, sir, at that time in 1965,
25 did you have any connection with the Workmen's Compensation
26 Board?
27 A. None whatsoever except for swearing
28 of affidavits which they sent over on occasion.
29 Q. Was that a matter of payment or
30 remuneration or was it on a courtesy basis?

1 A. Courtesy basis.

2 Q. Tell me, sir, is it a common matter
3 amongst solicitors to extend this courtesy one to the other?

4 A. Yes, I am aware of that.

5 Q. And the events now are almost seven
6 years ago or six and a half, I suppose. Tell us what you
7 can, sir, relative to any knowledge that you have of the
8 background of the affidavit firstly. Do you have any
9 knowledge of the incidents that gave rise to the action?

10 A. No, none whatsoever.

11 Q. Did you have any knowledge about the
12 action itself prior to the incident of swearing the
13 affidavit?

14 A. None.

15 Q. Were you acquainted with the proponent
16 at that time, the person who swore that affidavit?

17 A. No, I didn't know Mr. Hollingworth
18 prior to that time.

19 Q. Were you acquainted with Mr. Cauley
20 at that time?

21 A. No, I didn't know Mr. Cauley.

22 Q. What about Mr. Lane, the solicitor
23 for the Board?

24 A. I knew Mr. Lane through association
25 amongst lawyers but not personally.

26 Q. Can you tell us what you can recall
27 about the events, sir, please?

28 A. Perhaps I should explain the practise
29 of the Workmen's Compensation Board Legal Department
30 was to call whenever they had affidavits for swearing just

1 to see if it was convenient to come over. I would say,
2 without any direct recollection of this particular
3 affidavit, that there would be a phone call to me to see
4 if I could swear the affidavit and in due time Mr. Hollingworth
5 would appear and get sworn.

6 Q. Can you help us as to the approximate
7 number of incidents such as this there might be in a week
8 or a year or something of that nature?

9 A. I am afraid they weren't very regular
10 but there were a fair number of them. I wouldn't want to
11 number them by any means. They haven't occurred in recent
12 times since they changed the practise of swearing affidavits
13 outside the office.

14 Q. Do you have any particular recollection of
15 a phone call relative to this particular affidavit?

16 A. No, I have no direct knowledge of that.

17 Q. Tell me, sir, do you have any particular
18 recollection of the swearing of the affidavit itself?

19 A. I am afraid not. I have looked at the
20 copy of the affidavit which has been given to me and I
21 recognize my signature on it but I have no direct recollection
22 of the actual swearing.

23 Q. And you tell us your practise was you
24 would get a call and the person would come and the affidavit
25 would be sworn; that is the standard practise?

26 A. Yes.

27 Q. And to apply this practise to this
28 particular incident, you can't do it from memory, I take it?
29 It did happen in this case?

30 A. My practise was when he appeared before

1 me to ask him to identify himself, to ask him to swear that
2 the contents of the affidavit were true "so help you God"
3 and to affix my signature following his signature.

4 Q. Is it the practise to identify him
5 and ask him if the contents were true and sworn to be so
6 and after his signature or your signature is affixed to
7 the swearing?

8 A. Yes.

9 Q. Did you at some time later come to
10 know Mr. Hollingworth, sir?

11 A. No, I don't think I met Mr. Hollingworth
12 until the proceedings since that time. I don't recall
13 swearing any further affidavits for him.

14 Q. Did you have any knowledge of the
15 follow-up of the affidavits, what turned out of the lawsuit
16 or conduct of any of the parties?

17 A. None whatsoever.

18 Q. Did you have any knowledge at all
19 about the Bancroft affidavit?

20 A. None whatsoever.

21 Q. Tell me, sir, if there had been some
22 element of compulsion that was apparent to you or if it
23 had become apparent to you in the course of swearing the
24 affidavit and there was some suspicion of falsity, would
25 that be a suspicion you would recall?

26 A. I would say so. I would refuse to
27 swear an affidavit under those circumstances.

28 Q. Do you have any recollection of anything
29 of that nature in connection with this affidavit being
30 specifically recalled, do you have any memory of any

1 specific circumstances?

2 A. No.

3 MR. DONNELLY: The other members may ask
4 you some questions.

5 THE CHAIRMAN: Mr. Good?

6 MR. GOOD: Just one point for clarification.
7 You said you knew Mr. Lane and you didn't know Mr. Hollingworth?

8 THE WITNESS: I didn't know Mr. Hollingworth.

9 MR. GOOD: What procedure then, say, when he
10 walked in to swear this affidavit for him to identify himself,
11 was he alone or was Mr. Lane with him?

12 THE WITNESS: Without the direct recollection
13 I would expect that he would come in on his own without a
14 solicitor. That was the normal practise.

15 MR. GOOD: How would you know who he was?

16 THE WITNESS: I would ask him to identify
17 himself and ask him if he was the one named in the affidavit
18 and he would say yes.

19 MR. GOOD: He wouldn't have to produce any
20 identification?

21 THE WITNESS: If I had any doubts, I would
22 ask him for identification, but having been sent or expecting
23 him to come for the swearing after a phone call from
24 Workmen's Compensation, I would have no reason to expect
25 that.

26 MR. GOOD: The phone call would be from whom?

27 THE WITNESS: Probably somebody in the Legal
28 Department, maybe a secretary phoning to my secretary.

29 MR. GOOD: You wouldn't know either I suppose?

30 THE WITNESS: In more recent years if I had a

Rest,

1 phone call from one of the solicitors, I would recognize
2 but it is usually through my secretary. She would just
3 come in and say, "Is it convenient for Mr. (whoever it
4 may be) to come over and swear an affidavit?"

5 MR. GOOD: There is nothing unusual about
6 this procedure?

7 THE WITNESS: No.

8 MR. GOOD: Not knowing the person who is
9 signing.

10 THE CHAIRMAN: Are there further questions
11 from Committee members? Other members?

12 Mr. Lawlor?

13 MR. LAWLOR: Just one question. Would you
14 have noted whether the affidavits that were being sent
15 over to you were exclusively those in connection with
16 court proceedings? Would there always for instance be a
17 style of cause on the affidavit?

18 THE WITNESS: I would say yes, normally
19 they were affidavits in connection with actions. I have
20 no direct recollection of this one.

21 THE CHAIRMAN: No further questions?

22 MR. DONNELLY: I have no questions, sir.

23 THE CHAIRMAN: Thank you, Mr. Rest.

24 THE WITNESS: Am I excused? My I return
25 back to the office now?

26 THE CHAIRMAN: Yes.

27 MR. DONNELLY: Is Miss Dunlop here?

28 THE CHAIRMAN: (Swears the witness)

29

30 ELLEN CAROLINE DUNLOP, Sworn:

1 EXAMINATION BY MR. DONNELLY:

2 Q. Miss Dunlop appears with her counsel,
3 Mr. Austin, Mr. Chairman.

4 Miss Dunlop, your full name is ---

5 A. Ellen Caroline Dunlop.

6 Q. And your occupation?

7 A. I am in the administration section.

8 Q. Of?

9 A. Of the Board.

10 Q. How long have you been employed by
11 the Board?

12 A. Since 1940.

13 Q. And are you acquainted with Florence
14 Bancroft?

15 A. Yes, I am.

16 Q. And were you acquainted with her in
17 December of 1965?

18 A. Yes.

19 Q. Did you work together at that time
20 do you recall?

21 A. I was just legal secretary on the
22 fourth floor and Miss Bancroft was on the first floor.

23 Q. You have also been present during
24 the evidence given this morning?

25 A. Yes.

26 Q. Were you also here yesterday?

27 A. Yes.

28 Q. And you are aware then we are dealing
29 with the circumstances about these affidavits?

30 A. Yes.

1 Q. Tell me, prior to the incident of
2 these affidavits did you have any knowledge of the portraits
3 and prints and trouble over that area?

4 A. I can't recall that I did have any.

5 Q. Did you know of the lawsuit?

6 A. No.

7 Q. What was the first indication to you
8 of this matter; do you recall?

9 A. I can't really remember. There were
10 just little bits of information.

11 Q. Relative to -- I just didn't follow
12 your answer.

13 A. The photographs, yes. I knew something
14 about it but I didn't know the circumstances.

15 Q. Relative to the incidents surrounding
16 the affidavit, the taking of Miss Bancroft's affidavit,
17 what is the first you recall about that incident?

18 A. I had really forgotten about it.
19 There was never any dramatic scene and what I do remember
20 is Dr. Steele asking me to take Miss Bancroft out and
21 suggested I take her home.

22 Q. Where was she then?

23 A. If I remember correctly, she was in
24 Dr. Steele's office.

25 Q. Do you recall whether you saw her
26 earlier that day?

27 A. No, I don't.

28 Q. You say if you remember correctly she
29 was in Dr. Steele's office?

30 A. Yes.

1 Q. What do you remember after that,
2 after the doctor saying this to you?

3 A. I remember taking her up to my home
4 and the only way that I can identify that day is that it
5 was previous to March 1st, 1966 when I was living on
6 Briar Hill Avenue.

7 Q. You made a move on a certain date and
8 you know it was to the former residence; is that what you
9 are saying?

10 A. Yes.

11 Q. Specifically what date it was, you
12 can't tell us?

13 A. No.

14 Q. Can you help us as to Miss Bancroft's
15 composure or want for composure?

16 A. She was upset but for a long time we
17 didn't talk about it.

18 Q. A long time?

19 A. Yes.

20 Q. You mean that day or many days?

21 A. I would say many days.

22 Q. Do you recall if there was any
23 conversation on that particular day when you took her to
24 your home?

25 A. No.

26 Q. You say she was upset. Could you
27 give us any further information about that?

28 A. No, I don't remember.

29 Q. At any time when you saw her on that
30 day could she be described as hysterical or screaming or

1 anything of that nature?

2 A. No, I have never heard her scream
3 hysterically.

4 Q. Can you help us as to whether there
5 was any change in her composure during the time you spent
6 with her?

7 A. No.

8 Q. How long were you with her; do you
9 recall?

10

11

12

13

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1 A. I am almost certain that I came back
2 to the office and I would bring her back and she probably
3 went home in her usual way.

4 Q. Did you know this or do you recall?

5 A. No, I really don't.

6 Q. You are certain you took her to your
7 home and you surmise after that you would bring her
8 back and after she would go home in the usual way?

9 A. Yes.

10 Q. But you don't know that I take it?

11 A. That's right.

12 Q. Do you have any personal knowledge of
13 her attendance at work after that interval?

14 A. Well, consulting and hearing about
15 the records of her attendance, I do know that she was
16 away after that. But I wouldn't have remembered if it
17 was the next day or whether it was a week later.

18 Q. You said she didn't speak about it
19 for some time but eventually she did speak about it?

20 A. Yes.

21 Q. What was said in this eventual
22 conversation; do you recall it?

23 A. Just that she had been called into
24 the Boardroom about a matter and that she had been asked
25 to swear an affidavit and she had, or was prepared to do
26 that because it was a true affidavit and the reason she
27 was upset because it was a matter that concerned Mr.
28 Cauley, and she had worked for him for a considerable
29 number of years directly.

30 Q. And did you have anything to do with

1 the taking of the affidavit or the taking of the statement
2 or typing any of the documents or anything of that nature?

3 A. No, none at all.

4 Q. Have you told us all she told you
5 about why she was upset?

6 A. Yes.

7 Q. Did she mention anything about
8 perjury or swearing false documents?

9 A. No.

10 Q. Did she mention anything about
11 intimidation or threats or compulsion?

12 A. No, that wasn't her concern.

13 Q. You say she was concerned because
14 she had worked for Mr. Cauley for some years or a long
15 time?

16 A. Yes.

17 MR. DONNELLY: It may be some of the
18 members will ask you questions; thank you.

19 THE CHAIRMAN: Mr. Deans?

20 MR. DEANS: Miss Dunlop, did you know Miss
21 Bancroft very well?

22 THE WITNESS: Yes.

23 MR. DEANS: You saw her prior to this
24 occasion on a number of occasions?

25 THE WITNESS: Oh yes.

26 MR. DEANS: Was Miss Bancroft easily upset?

27 THE WITNESS: She is a very sensitive
28 person and I don't say more than that. I don't think she
29 was abnormally that way.

30 MR. DEANS: Can you recall incidents where

1 she was upset to the point where you had to go with her
2 any place?

3 THE WITNESS: No, I would assume that was
4 the only time I was asked.

5 MR. DEANS: Can you recall whether she
6 was crying?

7 THE WITNESS: No, I don't.

8 MR. DEANS: In the time after the incident
9 that you are talking about -- well, let me ask one other
10 question: can you recall other employees having gone to
11 Dr. Steele and Dr. Steele asking you to take her out?

12 THE WITNESS: He never asked me to look
13 after anyone or take anyone out, but I know that any
14 of the older staff felt free to go into him. He had
15 been there for a long time.

16 MR. DEANS: Were you concerned when Miss
17 Bancroft was upset over some incident and you had to take
18 her out of the building, or you were asked to take her.
19 You didn't have to take her, but you were asked to take
20 her.

21 THE WITNESS: No, I don't think so. I really
22 didn't know what it was all about.

23 MR. DEANS: You know, I just wonder to
24 put it into a statement, you are with someone you knew
25 very well and that you knew was obviously very upset.
26 I say that it would be marginally upset or very upset,
27 I don't know, to be asked if the Doctor felt that she
28 was sufficiently upset to go home or to go away from the
29 building, did it not worry you a bit that she was upset?

30 THE WITNESS: It really didn't worry me,

1 no.

2 MR. DEANS: It didn't concern you, you
3 just did it ---

4 THE WITNESS: I was concerned, but in a
5 normal fashion.

6 MR. DEANS: You didn't talk to her at all
7 at that time?

8 THE WITNESS: No, I tried to get her mind
9 on other things.

10 MR. DEANS: You weren't aware of why she
11 was upset in any event?

12 THE WITNESS: No, I knew her well enough
13 that I wouldn't ask her questions.

14 MR. DEANS: In your discussions with Dr.
15 Steele, was there ever any discussion about the matter
16 of either the affidavit or the pictures?

17 THE WITNESS: I don't remember.

18 MR. DEANS: Not that you can recall?

19 THE WITNESS: No.

20 MR. DEANS: Was there ever any discussion
21 that you can recall or any discussion that you were
22 involved with?

23 THE WITNESS: No, I really hadn't known
24 the circumstances other than yesterday.

25 MR. DEANS: Were you aware that there was
26 disharmony within the Board?

27 THE WITNESS: Well, with changes there is
28 always a bit of disharmony.

29 MR. DEANS: Can you recall whether Dr.
30 Steele was unhappy with the way the Board was?

1 THE WITNESS: Well I really can't speak
2 for Dr. Steele.

3 MR. DEANS: I am not asking you to speak
4 for him, I am asking you to tell me if you can recall
5 him mentioning that?

6 THE WITNESS: Well he was always talking
7 about retiring early. He liked north country.

8 MR. DEANS: So do I.

9 THE WITNESS: And he had been on the Board
10 for over 25 years.

11 MR. DEANS: Then what you are saying is
12 you don't recall at any time that he said he didn't
13 like the way things were going, he thought he would get
14 out. Maybe not in those words, but to that intent?

15 THE WITNESS: No, I really can't make
16 any comment on it.

17 MR. DEANS: Did you ever recall him
18 ever discussing at any time Mr. Cauley's position with
19 the Board?

20 THE WITNESS: Well, there were often
21 facetious remarks probably but I never heard anything
22 that was fairly serious.

23 MR. DEANS: When you heard, finally heard --
24 when did you hear of the affidavit?

25 THE WITNESS: I really can't remember
26 not
27 because I think there was/a Board meeting for some
28 months before the matter came up about the pictures,
29 so I don't know when I just heard about it.

30 MR. DEANS: There was Board meetings
about the pictures.

1 MR. AUSTIN: There was a Board meeting.

2 MR. DEANS: Some months previous to this?

3 THE WITNESS: Yes, so it was continuing.

4 MR. DEANS: You weren't required to be
5 present at the Board meetings?

6 THE WITNESS: No.

7 MR. DEANS: And you weren't required to
8 take notes or to correspond in regard to Board meetings?

9 THE WITNESS: No.

10 MR. DEANS: Can you recall Dr. Steele
11 ever mentioning the situation he was in with regard to
12 his benefits, sick leave credits and the like?

13 THE WITNESS: No, I don't.

14 MR. DEANS: Thank you.

15 THE CHAIRMAN: Mr. Lawlor?

16 MR. LAWLOR: You never really answered
17 counsel's question on the length of time from the time
18 you came into Dr. Steele's office with Miss Bancroft
19 until you left her I believe at your home. How long
20 would that be? Take a shrewd estimate of that.

21 THE WITNESS: A couple of hours.

22 MR. LAWLOR: During that time you drove
23 her I take it in your car? What length of time would
24 be involved in that trip?

25 THE WITNESS: Twenty minutes both ways.

26 MR. LAWLOR: Either in Dr. Steele's office
27 or while you were driving in the car with her, just the
28 two of you in the car, did you have any conversation at
29 all?

30 THE WITNESS: I can't remember it.

1 MR. LAWLOR: Were you not curious as to
2 this rather somewhat unusual incident taking place and
3 the cause of it?

4 THE WITNESS: No, I really wasn't.

5 MR. LAWLOR: You said that you tried to
6 get her mind on other things.

7 THE WITNESS: Yes.

8 MR. LAWLOR: What do you mean by that?

9 THE WITNESS: Well, nothing very deep; just
10 to get her out of the atmosphere.

11 MR. LAWLOR: Did you talk about different
12 things as you drove along?

13 THE WITNESS: Yes.

14 MR. LAWLOR: But no reference at all to
15 the reason that you were taking her?

16 THE WITNESS: Not that I can remember.

17 MR. LAWLOR: Thank you.

18 THE CHAIRMAN: Are there further questions
19 from the members of the Committee or other members?

20 Mr. Deans?

21 MR. DEANS: Miss Dunlop, since the time this
22 matter became a matter of public discussion in the last
23 month, have you discussed it with anyone?

24 THE WITNESS: No, I haven't.

25 MR. DEANS: There have never been discussions?

26 MR. DONNELLY: I did cause the Inspector
27 of the Provincial Police to interview Miss Dunlop and
28 serve a subpoena on her and in connection with that he
29 gave me a summary of his interview.

30 MR. DEANS: Has anyone spoken to you about it?

1 THE WITNESS: No.

2 MR. DEANS: No one at the Board has
3 mentioned to you that you might be called or there would
4 be discussion?

5 THE WITNESS: I was told I would be
6 called.

7 MR. DEANS: Who told you?

8 THE WITNESS: Well I think I read it in
9 the paper first.

10 MR. DEANS: That is where we get most of
11 our news. I agree, that is where I get my information
12 too.

13 THE CHAIRMAN: Are there further questions?

14 MR. DEANS: I want to ask another question:

15 Miss Dunlop, up until 1965 you were working for Dr.
16 Steele. Did you work for Dr. Steele after 1965?

17 THE WITNESS: Yes, until after he retired.

18 MR. DEANS: Did you notice any change in
19 the Board from 1965 on that you weren't aware of prior
20 to 1965?

21 THE WITNESS: There were changes; that is
22 all I can say.

23 MR. DEANS: Would you say that Dr. Steele
24 was as happy at the Board after 1965 as he was up until
25 1965?

26 THE WITNESS: Yes.

27 MR. DEANS: You were his private secretary?

28 THE WITNESS: Yes. He was a happy person,
29 he was agreeable.

30 MR. DEANS: But you didn't notice any

1 difference in his attitude about the way the Board
2 operated or his feelings about the Board after 1965
3 from what had happened prior?

4 THE WITNESS: No.

5 MR. DEANS: Thank you very much.

6 THE CHAIRMAN: Does counsel for Mr. Cauley
7 wish to question the witness?

8 MR. DONNELLY: Witness, the question was
9 put to you and the answer to me seemed to equivocal, I
10 didn't seem to understand it. You were asked to recall
11 if Miss Bancroft was crying.

12 THE WITNESS: Well she wasn't sobbing.
13 I don't really remember, but there was nothing sufficiently
14 dramatic about it that I recall.

15 MR. DONNELLY: Q. Tell me, you said
16 having heard the proceedings now or yesterday you became
17 aware that there were extended absences by Miss Bancroft
18 following this incident.

19 A. Well, just that I remember events
20 more clearly, yes.

21 Q. Tell me, does the fact now demonstrate
22 of those absences make you reconsider how upset you recall
23 her as being; does that change your view?

24 A. Just she continued to be upset. It
25 wasn't just a little incident.

26 Q. Does it affect your recollection
27 how upset she was on the day of swearing the affidavit?

28 A. No, it really doesn't.

29 Q. You say that the conditions seemed
30 to continue on. She didn't get over it quickly; is that

1 what you are saying?

2 A. Yes.

3 Q. The counsel points out I think that
4 it is on the record of these proceedings that Miss
5 Bancroft said that she cried at Dr. Steele's office.

6 A. Yes, well, that could be. I don't
7 remember that I was in the office when she was in there.

8 Q. Do you have any recollection prior ---

9 A. What I do remember is Dr. Steele
10 just saying that she was upset and would I get her away
11 for a while.

12 MR. DONNELLY: Thank you.

13 MR. LAPKIN: Thank you, Mr. Chairman.

14 THE CHAIRMAN: If there are no further
15 questions, thank you, Miss Dunlop, for assisting the
16 Committee. You may be excused.

17 MR. AUSTIN: May this witness now be
18 excused, Mr. Chairman?

19 THE CHAIRMAN: Yes.

20 MR. DONNELLY: Mr. Chairman, may I advise
21 the Committee that I had a subpoena issued for Dr.
22 Steele and sent up to his home to be served and I was
23 instructed by the officer who was assisting me that
24 Dr. Steele is in I think either Spain or Portugal and
25 was not available to be served with the subpoena, sir.

26

27

28 MR. LAWLOR: Is there any indication,
29 Mr. Donnelly, as to whether he will be back at all?

30 MR. DONNELLY: The report was a week ago

1 that he would be away for about a month. When I say a
2 week ago, that was a week prior to the attempted service
3 of the subpoena which I think was a week ago yesterday.

4 Is (Mr. Marmash) here?

5 Mr. Eberlee please?

6 May it please, Mr. Chairman, just for
7 the purpose of following the proceedings, I don't
8 propose calling any further witnesses at this time just
9 on a question of perjury or the allegation of swearing
10 of false documents, but keep in mind that witnesses will
11 be called and I am thinking specifically from the Board
12 who may later be questioned about those matters, so
13 just for the purposes of continuity, I now propose to call
14 Mr. Eberlee dealing with the severance conditions that
15 existed.

1 THE CHAIRMAN: It is understood among the
2 Committee members that this does not close the evidence
3 with respect to the affidavits? We will be dealing
4 further with that later.

5 THE CHAIRMAN: (Swears the witness)

6 THOMAS EBERLEE, sworn:

7 MR. DONNELLY: Q. Your name, sir?

8 A. Thomas Eberlee.

9 Q. Your occupation?

10 A. I am Deputy Minister of Management
11 Policy on the Management Board. I was Deputy Minister
12 of the Department of Labour from 1966 until last fall.

13 Q. Until when, sir?

14 A. Until last fall. From January of
15 1966 until November 15th of 1971.

16 Q. How long have you been in the govern-
17 ment's service, sir?

18 A. Almost 14 years.

19 Q. And are you acquainted with Mr.
20 Jack Cauley?

21 A. Yes, I am.

22 Q. How long have you known him?

23 A. Oh, since I would say about 1959,
24 since I was in the office of the then Premier, Mr. Frost.

25 Q. Did you know him personally or in
26 connection with your respective jobs, sir, or how was
27 it you became acquainted?

28 A. Our acquaintance began with our
29 respective jobs, but I did have a personal acquaintance
30 with him.

1 Q. It may later come before the
2 attention of the Board or perhaps in restating what is
3 here now that Mr. Cauley on some incident came to your
4 home. Do you recall the incident he speaks about?

5 A. Yes, I do.

6 Q. I don't want to deal with it just
7 yet, but do you recall the incident?

8 A. Yes.

9 Q. Was it unusual or usual that he would
10 come to your home?

11 A. That was unusual; it surprised me.

12 Q. Now we know Mr. Cauley was the vice-
13 chairman of the Board for many years and you were a
14 deputy, were you?

15 A. Deputy Minister in the Labour
16 Department.

17 Q. Now, the incidents that the Committee
18 I think are interested in hinge around certain events in
19 probably April and May of 1969, but I think they also
20 have an interest in the Compensation Board even prior to
21 that time and I suspect they may want to know something
22 about your knowledge of the conditions there prior to
23 the conversation with Mr. Cauley so I propose leaving
24 those conversations over for the moment. Could you give
25 us some background as to your knowledge of the events,
26 sir?

27 A. Of the events?

28 Q. Just generally in connection with
29 the Board.

30 A. Prior to the incident?

1 Q. Prior to the incident of the resigna-
2 tion.

3 A. Mr. Chairman, as Deputy Minister in
4 the Labour Department of course I had neither authority
5 or responsibility in connection with the Compensation
6 Board but I did from time to time act as an advisor
7 to my minister. So my knowledge of what went on in the
8 Board, what was going on in the Board, tended to be of
9 a second hand nature.

10 Q. Before you went on, you used the
11 words you had no direct responsibility or something to
12 that effect. Could you explain that for me, please?

13 A. Well, under the Act of course the
14 Board is an independent quasi-judicial tribunal and I
15 had no role in directing the Board to do anything and
16 was in no relationship with the Board in the sense as
17 a branch within the Department of Labour I was responsible
18 for, I had authority over it in the scheme of things,
19 but that sort of relationship didn't exist with the
20 Board. The Board itself reported directly to the
21 Minister although occasionally the members of the
22 Board used me as a channel of communication to the
23 Minister perhaps in order to convenience themselves. I
24 was not particularly involved with the Board. From
25 '62 to '65 I was assistant Deputy Minister of the
26 Department. Occasionally a case, an unresolved compen-
27 sation case would come to my attention, somebody would
28 write to me or someone would appear in my office. I
29 would take the matter up, generally speaking, with the
30 secretary of the Board, further the matter to the

1 secretary of the Board. I assisted the Minister as to
2 the introduction of certain legislation into the House.
3 I think there were amendments in 1963; there were
4 amendments in various years which I have assisted the
5 Minister on the source of background and so on and that
6 would be the source of my ---

7 Q. If I could direct your attention I
8 think the Committee is interested as to whether or not
9 there was some discord perhaps in the Board and whether
10 or not that discord was sufficient in that it impaired
11 the function of the Board and possibly even went beyond
12 that to deplete the personnel resources of the Board.
13 Now are you able to give us any information relative to
14 that?

15 A. There were two or three occasions
16 following 1965, following the period where Mr. Cauley
17 was away recovering from his heart attack in the years
18 '67 and '68 when he and I had conversations, when he came
19 to me particularly about the appeal system that had been
20 introduced. Those concerns of course I communicated to
21 the Minister. I assume Mr. Cauley was on one or two
22 occasions seeking advice from me and I took the position
23 with him that, after all, there were three members of
24 the Board; he was one of three members; if he was concern-
25 ed about a matter such as the appeal system which lay
26 completely within the ambit of the Board to establish or
27 to take apart, he should, after all, deal with his
28 fellow members of the Board on that matter. Or, alter-
29 natively, he should document the situation. I am not
30 aware of what course of action he took subsequently, but

1 he was very much opposed to this appeal system. My
2 own observation second hand as a layman was that the
3 appeal system was an improvement in that certainly the
4 number of dissatisfied claimants who appeared in the
5 offices, my own office and from my knowledge in the
6 Minister's office, had greatly been reduced. There now
7 appeared to be a system under which people were able to
8 achieve or at least try for justice, you know, to make
9 their cases.

10 I was also strengthened in that view of
11 course by the fact that the McGillivray Royal Commission
12 had reported -- I think it is a fair interpretation of
13 that report to say that they reported favourably on
14 the appeal system. I always viewed this as an honest
15 difference of opinion on the matter, although I must
16 admit that by the spring of 1969 which we will deal with
17 I presume subsequently, I began to wonder why this
18 continued to be such a tremendous matter of concern with
19 Mr. Cauley and in all honesty I began to suspect in my
20 layman's way that it was almost a fixation with him.

21 Q. Did that concern continue evidenced
22 to yourself through 1969 or did it seem to be an
23 intermittent thing?

24 A. It seemed to be an intermitent thing.

25 Q. You said Mr. Cauley came to you on
26 different occasions relative to these matters and did
27 other commissioners or members of the Board come to you
28 in connection with the same matters?

29 A. No, they didn't.

30 Q. As I recall you say that the particu-

1 lar appeal structure was something within the confines
2 of the Board within their jurisdiction your thought should
3 be dealt with there?

4 A. That is correct.

5 Q. Now, with that are you able to make
6 any comment as to whether or not from your own experience
7 or your own knowledge that this continuing objection to
8 the appeal system, did it in any way impair the function
9 of the Board that came to your knowledge?

10 A. No, I can't say that I was aware that
11 it was impairing the function of the Board.

12 Q. Again this may not be within your
13 knowledge and there may be other witnesses ---

14 A. I was aware that Mr. Cauley did not
15 particularly like Mr. Legge, the Chairman. Mr. Cauley
16 had intimated that to me. But I was not aware of that
17 or that his view on the appeal system was in any way
18 rendering the Board less efficient.

19 Q. And in connection with the personnel
20 resources of the Board, are you able to help the Committee
21 in that respect , that it seems a lot of long service
22 employees left about this time? Do you have any knowledge
23 of that or why it was, sir?

24 A. No, I don't have direct knowledge of
25 that. That would have been -- it is difficult to
26 separate what I have heard in the last two or three days
27 and what I have read in the paper from the intimations
28 that, for example, Mr. Cauley made to me on two or
29 three occasions. I suspect he did say to me that people
30 were leaving the Board although I can't remember any names

1 specifically.

2 Q. Do you have any records, sir, as to
3 the occasions when the Minister would meet with the Board
4 or these matters were brought to him to be dealt with
5 or anything of that nature?

6 A. Well I didn't sit in during that
7 period in more than two or three meetings. I don't have
8 any records at this time.

9 Q. To your knowledge did Mr. Cauley's
10 objections come through the Minister? Do you know any-
11 thing about that?

12 A. I indicated them to the various
13 ministers and I have every reason to believe that Mr.
14 Cauley communicated to them directly as well to the
15 Minister because he had access to them.

16 Q. I want you to turn your mind, sir,
17 if you would to the conversation between you and Mr.
18 Cauley in April or May of 1969. Can you tell us what
19 you recall about that, please?

20 A. Well, I recall that Mr. Cauley
21 intimated to me that he was concerned about his health.

22 Q. When was this, sir?

23 A. It was late April in 1969. I was
24 busy in the backyard erecting one of those metal garden
25 tool sheds with 367 screws that you have to install. I
26 can't say that I was particularly pleased to have a
27 visitor at that particular point because I had hoped
28 to get that job done before the sun set. But I did
29 pause -- I'm afraid I didn't invite Mr. Cauley into the
30 house. My wife, I believe, was busy doing some cleaning

1 and whatnot and instead we stood outside for a few minutes
2 and Mr. Cauley was in a highly agitated and upset frame
3 of mind. That was my observation. I wasn't clear
4 immediately on why he was there. At first I assumed
5 perhaps he was seeking advice, but he as I say intimated
6 to me and I regret that I did not make a record of the
7 conversation because I immediately went back to try and
8 erect that shed to get it done. He did intimate to
9 me that he was concerned about his health. I believe
10 he told me that he was off for a few days. I believe
11 he told me that his doctor had suggested that he take
12 some time off. That is my recollection of it.

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1 He seemed to be very much concerned about
2 a loss of influence and whatnot and he produced for me a
3 fairly thick pile of documents and clippings and assorted
4 documents which he said indicated that he had over the
5 years been extremely influential in the political sphere
6 and would I take them and read them. I am not sure or was
7 not sure at that time why he left these with me. He
8 expressed certain views about the Chairman of the Board
9 and he told me that he just didn't know how much longer
10 he could carry on.

11 I must admit I was disturbed by the inter-
12 view, by the conversation.

13 Q. I wonder if I could interrupt you
14 there, sir. You said he referred to the Chairman of the
15 Board and then went on to say that he had some misgivings
16 about how much longer he could carry on. To whom was he
17 referring when he said that?

18 A. I think he was referring to himself
19 and I certainly interpreted that conversation as referring
20 to his health.

21 Q. Go on, please.

22 A. I then reported the conversations to
23 the Minister because I assumed perhaps Mr. Cauley wanted
24 to see the Minister and obviously there was going to have
25 to be a meeting to discuss the problems. So I reported
26 the conversation to Mr. Bales.

27 Q. Do you recall anything further about
28 the conversation itself before we leave it, sir, anything
29 specifically that was said?

30 A. Well the problem as I recollect the

1 | gist of it but I really don't recollect precise words.

2 | Q. You say you then did report to the
3 | Minister relative to the conversation and its content,
4 | did you?

5 | A. Yes, and I certainly led the Minister
6 | to believe that I believed, or at least I communicated to
7 | the Minister I know that I was -- that Mr. Cauley had
8 | expressed concerns about his health and that I had observed
9 | that he was in a highly agitated and disturbed condition
10 | and that I thought we should see him as a result of that.

11 | MR. LAWLOR: Would the counsel produce the
12 | thick file?

13 | MR. DONNELLY: I have been asked to deal,
14 | Mr. Eberlee, with the thick files and I take that to mean
15 | a reference to the file of documents or clippings that you
16 | said were left with you by Mr. Cauley. Did you make an
17 | examination of those documents?

18 | A. I examined them very cursorily. They
19 | weren't at that time material that was under discussion.
20 | They purported to show that Mr. Cauley had played a very
21 | considerable part in the election of 1943 and they were
22 | copies of memoranda that he had written to the Honourable
23 | George Drew and the Honourable Leslie Frost about political
24 | matters over the years. As I say, I didn't really pay very
25 | much attention to it and I in some way or other think I
26 | sent them back to his home in Hamilton. I am a little
27 | unclear about whether this interview took place in the
28 | week before we had the meeting at the Minister's office
29 | or whether it was the very weekend before. I think I had
30 | these things delivered back to Mr. Cauley's home in Hamilton

1 but I am not sure.

2 Q. Do you recall anything further
3 about these clippings or documents, sir?

4 A. No, I don't. I can't say that they
5 made much of an impression on me.

6 Q. Do you recall if any of them dealt
7 particularly with the current situation in the Board or
8 what Mr. Cauley may have thought the current situation
9 was at that time?

10 A. I do recall that it did not deal with
11 the current situation of the Board but rather dealt with
12 Mr. Cauley's previous political activities.

13 Q. Now, sir, you were saying you reported
14 to the Minister Mr. Cauley's concern or expressed concern
15 about his health in your own observation, in his agitated
16 state, and you thought that he should be seen?

17 A. That is correct.

18 Q. Could you go on from there, sir,
19 please.

20 A. Well then an arrangement was made for
21 Mr. Cauley to come to the office. Mr. Bales and I sat down
22 with Mr. Cauley and it was a very cordial atmosphere.

23 Q. Are you now able to tell us when this
24 particular incident was?

25 A. Well, I can't dispute the dates that
26 have been given. I believe the date of May 5th was given.
27 I can't dispute that.

28 Q. Of 1969?

29 A. Yes.

30 Q. And you say you think it was either

1 the weekend immediately prior or the weekend before that
2 you had the conversation in your garden with Mr. Cauley;
3 is that right?

4 A. That is correct. I observed that
5 Mr. Cauley was less agitated; he was less agitated in the
6 Minister's office than he was when he visited me. Mr. Bales
7 began by discussing Mr. Cauley's health. Mr. Cauley ---

8 Q. I think it is important, sir, if you
9 can, as nearly as you can, to restate what was said rather
10 than just give your impression. I realize it's difficult
11 but if you will try to help us in that respect?

12 A. Yes. Well, my recollection is that
13 Mr. Bales did make reference to the fact that Mr. Cauley
14 had been away, was away, did make reference to Mr. Cauley's
15 health problems, his previous health problems, did make
16 reference to the fact that Mr. Cauley had in conversation
17 with me referred to his health problem. I recall that
18 Mr. Cauley then said to Mr. Bales, "Do you want me to
19 retire?" This surprised me; this surprised me. Mr. Bales
20 said to Mr. Cauley that that matter of retirement was for
21 Mr. Cauley to decide and there was some further conversation
22 about the health situation. Mr. Cauley referred to dis-
23 cussions he had had with his wife to his view that he
24 should conclude his association with the Board and Mr. Bales
25 and Mr. Cauley agreed that under the circumstances of
26 Mr. Cauley's health as Mr. Cauley had described it, a
27 retirement would be warranted. Mr. Cauley told Mr. Bales
28 that he had a period of time, some two years to go before
29 he would be eligible for pension, and I don't recall the
30 basis but for full pension, that is my recollection, that

1 he had a large accumulation of sick leave credits and
2 vacation credits and that he would expect to be able to
3 take advantage of these credits or to be eligible then for
4 his pension. Mr. Bales told Mr. Cauley that Mr. Cauley
5 would receive whatever he was entitled to and that really
6 is what I recall of the conversation except that the
7 meeting ended very shortly thereafter on a completely
8 amicable note and Mr. Cauley, as I recall, was going to
9 write formally his letter of resignation.

10 Q. And thereafter did you again discuss
11 the matter or were you in company with Mr. Cauley when he
12 discussed the matter again?

13 A. No, I wasn't.

14 Q. Were you present at any further
15 discussion between the Minister and Mr. Cauley relative
16 to the termination?

17 A. I don't believe I was. I was aware
18 -- I believe Mr. Bales told me that he had written and he
19 was in to see Mr. Cauley.

20 Q. Were you aware of any Board order
21 around the 8th of May that the Board had terminated
22 Mr. Cauley's association with the Board?

23 A. I wasn't aware of that order but I
24 was aware a computation had been made of Mr. Cauley's
25 entitlement and although I was not aware of the details
26 at that time of the computation.

27 Q. Were the details of the entitlement
28 available to Mr. Bales at Mr. Cauley's conversation on
29 May 5th?

30 A. I am not aware of that. I was not in

1 possession of any files.

2 Q. Excuse me?

3 A. I am not aware of either man being in
4 the possession of the details.

5 Q. Did you at some time become aware of
6 the retirement letter of May 12th?

7 A. Yes. As I said over a week ago,
8 Mr. Bales told me he had received a retirement letter.

9 Q. Do you recall seeing it or simply recall
10 being told about?

11 A. I recall being told about it. I don't
12 recall seeing it.

13 Q. Do you recall a letter of ~~September~~ 9th,
14 to Mr. Cauley indicating he would send a certain order and
15 he would write it in relevant to the terms of employment?

16 A. No, I wouldn't recall that. I don't
17 think I did.

18 Q. There are certain matters which
19 Mr. Cauley and maybe the Minister are in dispute about what
20 was said in that May 5th conversation. You told us that
21 reference was made to some discussion about health.
22 Mr. Cauley told us something to this effect, that there
23 was discussion about getting a medical certificate. Do
24 you recall anything about that, sir?

25 A. No, I don't recall a discussion about
26 getting a medical certificate. I do recall, if I may give
27 an impression, I do recall being under the impression that
28 there was no question about Mr. Cauley's health being such
29 that he didn't feel he could carry on.

30 Q. Do you recall anything relative to

1 the Minister suggesting that Mr. Cauley should go out and
2 get himself a certificate?

3 A. No, I don't recall.

4 Q. Any suggestion that that might save
5 any embarrassment with the retirement or anything of that
6 nature?

7 A. No, I do not recall.

8 Q. You also made reference to the discussion
9 touching directly on the accumulated benefits that Mr. Cauley
10 was entitled to and I think his evidence to this Committee
11 and he said it as I read the transcript quite forcibly
12 and he started, "Gentlemen, let me make one thing plain.
13 May I say this as seriously as I can" or something to that
14 effect but there was no reference in that conversation
15 to holidays or accumulated sick benefits. What do you say
16 about that, sir?

17 A. My recollection is that Mr. Cauley
18 did say he had an accumulation of sick credits and of
19 vacation and that he would want to be able to take that,
20 he would want to be able to take advantage of that
21 accumulation.

22 Q. What about references as to time off
23 from the Board or time missed? What can you tell us about
24 that, sir?

25 A. Again my recollection is very hazy on
26 that precise matter of time off, but I do recall during
27 that discussion that reference was made to the fact that
28 Mr. Cauley had been off for several days during the month
29 of April and that the understanding was that it was from
30 an illness standpoint that he had been off.

1 Q. Do you know whether or not Mr. Bales
2 had been aware that Mr. Cauley was actually on duty then
3 or not or back at the Board?

4 A. I don't recall; I am not aware of
5 that.

6 Q. Do you recall if any distinction was
7 made between resigning as Vice-Chairman or resigning as
8 a Board member, any distinction made there?

9 A. No, my assumption certainly was that
10 he was going to resign as a member and Vice-Chairman.
11 There is, of course -- to be Vice-Chairman, one must of
12 course be first a member so I think the distinction is
13 there.

14 Q. Another point I think of direct
15 conflict seems to be as to the question of salary, salary
16 attainment to age 65. Can you give the Committee any
17 assistance on that point as to whether it was discussed?

18 A. Well, I don't believe it was discussed
19 because there would be no particular need for it to be
20 discussed. After all, when a person is on sick leave he
21 is on salary; there is no distinction, it is salary on
22 sick leave. You build up an accumulation of days of sick
23 leave and you are on salary, and so again I recollect no
24 distinction and I recollect no concern in my own mind as
25 to some distinction of that kind.

26 Q. If I understand Mr. Cauley's position
27 correctly, it is that he was to continue a normal salary
28 until age 65 and at that time he wanted his pension and
29 to begin taking his holiday and vacation credits up to
30 six months. Was there any discussion about that, sir?

1 A. As I said, Mr. Cauley himself raised
2 the matter of his sick credits and of his vacation credits
3 and said in effect that he wanted to take advantage of
4 those sick credits in order to cover the gap between the
5 time when he would cease to function as a member and
6 Vice-Chairman of the Board and the time at which he would
7 be eligible to go on pension.
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1 Q. There is also an area of difficulty
2 I think, sir, relative to the suggestion by Mr. Cauley
3 that he should disappear or go underground and not
4 appear publicly for six months.

5 Can you help the Committee in that area?

6 A. Sir, I have no recollection that
7 there was any understanding of that kind. Indeed, I
8 felt under no constraint. As I recall had anyone asked
9 me subsequent to the middle of May subsequent to Mr.
10 Cauley's resignation to deny Mr. Cauley had retired
11 and I am sure when I was asked, or if I had been asked
12 I would have said he had retired. I have no recollection
13 of any understanding that anybody would be lying low
14 or anything else.

15 Q. The important point I think we
16 must come right to is whether or not there was an
17 agreement made that he should stay on salary and not
18 work.

19 A. There was no agreement made that
20 he should stay on salary. The agreement if I can use
21 that term was that Mr. Cauley would receive whatever
22 he was entitled to in the shape of sick leave credits
23 and vacation credits, and Mr. Cauley led Mr. Bales to
24 believe, and me to believe -- I shouldn't put it that
25 way -- he led me to believe that he said to Mr. Bales
26 that he had this accumulation and that it would carry
27 him towards the date when he would be eligible for
28 pension.

29 Q. Is there any reference in a select
30 term policy or any retirement policy applying to Mr.

1 Cauley?

2 A. I don't recall that those terms
3 were used in the discussion.

4 Q. And the words that we heard in
5 this chamber were to the effect, "Jack Cauley won't
6 lose." Do you have any recollection of that expression?

7 A. No, I do not.

8 Q. Do you recall if there was any
9 reference to any retroactive salary increase pending as
10 a result of the Hickling and Johnston management survey?

11 A. Again I do not specifically recollect
12 that that was referred to.

13 Q. Now apart from the area that I have
14 specifically asked you about are there some matters that
15 you might or could bring before the Committee that might
16 be of assistance to the Committee in clarifying this
17 matter?

18 A. I don't think I really have anything
19 material that I can add.

20 MR. DONNELLY: Mr. Chairman, thank you.

21 THE CHAIRMAN: I will be governed by
22 your thinking, Mr. Counsel. It is almost 12:00 now.
23 Perhaps we should wait until after the lunch hour to
24 proceed with the other questioning.

25 MR. DONNELLY: There seems to be general
26 agreement among the Committee that that should be done.

27 THE CHAIRMAN: We will adjourn until
28 2:00 p.m. this afternoon.

29 --- Upon recessing at 12:00 noon.

30

1 --- Upon resuming at 2:15 p.m.

2 THOMAS EBERLEE, resumed:

3 THE CHAIRMAN: I call this meeting to
4 order. I would ask Committee counsel if he has com-
5 pleted his questioning of this witness?

6 MR. DONNELLY: Yes, sir; thank you.

7 THE CHAIRMAN: Then we will have
8 questions from Committee members.

9 Mr. Good?

10 MR. GOOD: Yes, one point that I don't
11 think was mentioned: From what Mr. Bales told us in
12 the legislature and also Mr. Cauley's account of the
13 meeting with you and Mr. Bales in Mr. Bales' office
14 indicated that not only was the matter of his retire-
15 ment discussed but Mr. Bales had indicated as his
16 colleague as to differences of opinion or friction
17 within the Board itself and made no mention nor was
18 any question directed by counsel to that effect whether
19 this aspect of this retirement was discussed at that
20 meeting. Now you have recalled almost verbatim many
21 of the other quotes that yourself and Mr. Bales had
22 at that meeting what went on in that regard at that
23 meeting.

24 THE WITNESS: I don't recall that the
25 matter of alleged dissention was discussed at that
26 meeting. Certainly both Mr. Bales and I well knew
27 Mr. Cauley's position on the appeal system so I
28 suspect there was no need for the matter to be discussed
29 at that point. My recollection is the thing centred
30 around Mr. Cauley's health and his feelings he couldn't

1 MR. GOOD: Alleged dissent and Mr.
2 Bales said in the House, "I acknowledge there were differ-
3 ences of opinion. While there were
4 differences of opinion and in view and
5 in policy between members of the Board
6 and I had one particular meeting with
7 all members of the Board and told
8 them that they were to reconcile
9 their differences if they could. If
10 not they were to come back to me and
11 we would explore the problem and we
12 did."

13 Mr. Cauley had indicated too in his trans-
14 cript of last week and he said, "I am sure Mr. Eberlee
15 was with him and I turned to Mr.
16 Eberlee, first I went to Mr. Eberlee's
17 home on the Sunday before and he was
18 putting up the garden..."

19 and we went through that this morning about the garden.
20 I'm sorry I don't have it at hand, but it would appear
21 to me that somewhere I recall that the matter of not
22 only the health aspects of the retirement if they were
23 discussed which you said they were this morning, but the
24 aspects of the differences within the Board as indicated
25 by Mr. Bales in the legislature were also or would also
26 be a subject of discussion at that meeting when his
27 retirement was discussed. Are you suggesting that there
28 was nothing discussed of that nature; it was simply the
29 matter of health?

30 THE WITNESS: I am suggesting that the

1 issue of health was the one that was paramount in that
2 discussion. I had no clear recollection that the other
3 matters that you refer to were discussed, but rather
4 the issue of health was the one that was discussed there.
5 My interpretation of that meeting was that Mr. Cauley's
6 decision to retire was based on Mr. Cauley's assessment
7 of his health situation because this other matter was
8 discussed.

9 MR. GOOD: So that to the best of your
10 recollection there was nothing discussed other than
11 health reasons at that particular meeting?

12 THE WITNESS: That is correct.

13 MR. GOOD: At any other time were matters
14 between you and Mr. Cauley and the Minister discussed
15 relating to meetings for severance that would relate to
16 dissention in the Board?

17 THE WITNESS: No. I can recall one earlier
18 meeting when Mr. Cauley did discuss in my presence with
19 the Minister the question of the appeal system and I
20 have alluded to that difference.

21 MR. GOOD: Do you recall in your discuss-
22 ions with Mr. Cauley and Mr. Bales anything that would
23 lead to believe this dialogue went on? According to Mr.
24 Cauley's report he says, "May I say once more that I met

25 with Mr. Bales and Mr. Eberlee. It
26 was on the first Monday..."

27 and he tried to establish the date of it. "Never was it
28 set out that I would go on my
29 accumulative credits because it was
30 ridiculous that I would accept such

1 a thing."

2 And he was relating to the fact that he knew if he went
3 on accumulative sick credits he would not be eligible
4 to accept another job. Now do you recall that that
5 aspect was discussed at your meeting with Mr. Bales
6 and Mr. Cauley?

7 THE WITNESS: Well, my recollection of
8 that meeting is that it was Mr. Cauley himself who
9 raised the matter of the existence of the substantial
10 accumulation of sick credits and vacation credits and
11 alluded to his desire that these should be available to
12 him so that he would be able to cover the period until
13 he was eligible for his pension. There was no reference
14 whatsoever to anything that would bar him then from
15 taking other employment in fact the question of other
16 employment wasn't discussed at all.

17 MR. GOOD: But then there was nothing
18 that you recall that would lead Mr. Cauley to believe
19 that he would be on sick benefits or would not be on
20 sick benefits; were aspects of the retirement arrange-
21 ments discussed?

22 THE WITNESS: Well, I must admit my
23 recollection had led me to the conclusion or led me to
24 the conclusion at the time that Mr. Cauley would expect
25 to be on sick leave credits, he would be expecting to
26 work his time out in that way. I am surprised that he
27 now has another interpretation.

28 MR. GOOD: That is all, Mr. Chairman.

29 THE CHAIRMAN: Mr. Deans?

30 MR. DEANS: Mr. Eberlee, you stated at the

1 beginning of your discussion today that you didn't have
2 a responsibility for the Board in any sense; nevertheless
3 it would be fair to say, would it, that you do have a
4 fairly intimate knowledge of the workings of the Board?
5 As the Deputy Minister of Labour you have a good day to
6 day knowledge of how the Board operates?

7 THE WITNESS: No, I wouldn't say I had
8 a day to day knowledge of how the Board operates.

9 MR. DEANS: Would you say you had a good
10 relationship or working relationship with the members
11 of the Board?

12 THE WITNESS: I thought I had, yes. That
13 was my assessment.

14 MR. DEANS: That you spoke with them from
15 time to time?

16 THE WITNESS: Yes, primarily this was in a
17 social setting rather than in a business setting.

18 MR. DEANS: Did you meet with the Board
19 with Mr. Bales or with the previous members?

20 THE WITNESS: I recall being present when
21 there was a meeting with the previous Board under the
22 chairmanship of Mr. Sparrow, at which time the work
23 of the Board was discussed with Mr. Rowntree. I suppose
24 it was a fiscal year-end report they were making to Mr.
25 Rowntree. I don't recall ever being present with the
26 Board as a whole when Mr. Bales met ^{with} /them. I recall
27 being there on one occasion when Mr. Cauley, when Mr.
28 Bales and Mr. Cauley were there.

29 MR. DEANS: Was this at this occasion?

30 THE WITNESS: This was a previous occasion.

1 MR. DEANS: When was that?

2 THE WITNESS: I don't recall. It must
3 have been in '67 or '68.

4 MR. DEANS: It centred around the appeal
5 system?

6 THE WITNESS: It centred around the appeal
7 system, yes.

8 MR. DEANS: Were you aware that there was
9 some friction / within the Board? You may not like the choice
10 of words. But it was a matter there of some disharmony
11 in the Board?

12 THE WITNESS: Mr. Cauley, of course, told me
13 himself there was such that did exist and he expressed his
14 lack of friendship for Mr. Legge.

15 MR. DEANS: Did you ever it from any other
16 member of the Board?

17 THE WITNESS: No, I did not.

18 MR. DEANS: Did the Minister discuss it with
19 you?

20 THE WITNESS: Yes, I believe he did.

21 MR. DEANS: Did the Minister say where he
22 was informed of it from?

23 THE WITNESS: No, he didn't. But I do recall
24 and I said earlier this morning that on a couple of
25 occasions Mr. Cauley had come to see me and I had assumed
26 he had come to see me seeking advice about this one
27 problem which consumed his attention, namely, the appeal
28 system. On each of these occasions of course I would have
29 communicated to the Minister the fact Mr. Cauley had come
30 to see me and the causes of the visit and so on. So it

1 may very well be that some of these things prompted the
2 Minister ---

3 MR. DEANS: Why did you communicate to the
4 Minister Mr. Cauley had dropped by to see you since it
5 was really an informal visit.

6 THE WITNESS: I would feel it my duty to
7 communicate it to him.

8 MR. DEANS: Did Mr. Cauley ever say why
9 he didn't go directly to the Minister rather than come to
10 you?

11 THE WITNESS: No, he didn't except there
12 was sometimes an intimation that since I had once worked
13 for Mr. Frost in his office that I would have some sort
14 of overall appreciation for the political ramifications,
15 whatever that might be, in this whole circumstance. Some-
16 how or other I should or I could be a channel of communi-
17 cation. On more than one occasion I said to Mr. Cauley
18 that I didn't know why he didn't go and simply talk to
19 the Minister about it which I assume he did. He had
20 other alternatives too. He could have tried to persuade
21 one of his fellow members of the Board to agree to a
22 motion which would have rescinded whatever motion it was
23 that brought the appeal system into existence and I also
24 suggested to him that he pursue that and the alternative
25 of course was to decide that he was going -- that he
26 couldn't live with the situation as an individual and
27 that he should resign and say publicly that that was
28 another alternative. But that was my personal advice
29 to him.

30 MR. DEANS: I recall that Mr. Cauley visited

with the Minister on two occasions in May, the 5th and the 12th if I am not mistaken? Were you present at both meetings?

THE WITNESS: No, I was present at the first one, but not at the second.

MR. DEANS: Now you mentioned that you didn't see -- you said earlier and I don't recall the exact words, but that you didn't see any particular difference between the salary and sick leave?

THE WITNESS: There isn't any difference between salary and sick leave. A person builds up an accumulation at the rate of so many days per month or per year and then when he is ill and must draw on that accumulation he is -- he simply remains on salary.

MR. DEANS: There is, of course ---

THE WITNESS: Deductions would continue.

MR. DEANS: Is it not true that a person on sick leave should produce from time to time a doctor's certificate?

THE WITNESS: Yes, there is. But in this area it would be better perhaps, more helpful to the Committee if they would obtain straight from the horse's mouth how the Workmen's Compensation sick leave system operates. I only know what I have in passing asked how the darn thing works. When it appeared in the paper I did ask people how it works.

MR. DEANS: The reason I asked you in the discussion with Mr. Cauley on the 5th of May Mr. Cauley seems to recall, and this has been raised with you before, Mr. Cauley seems to recall that at some point during the

1 conversation Mr. Bales saying to him, "You won't lose,
2 Jack." Now this is not very long, it's only four words.
3 Are you prepared to say that was never said?

4 THE WITNESS: To my knowledge it was never
5 said. I normally hear what goes on, but I didn't hear
6 that.

7 MR. DEANS: You feel confident that you
8 can remember back to 1969 and to say that that was
9 never said, that those four words were never uttered
10 in any sense during the conversation?

11 THE WITNESS: Sir, I recognize it is always
12 unwise to express absolute confidence that those words
13 were never said. But those words didn't -- while he
14 may have mumbled them to Jack beyond my hearing ---

15 MR. DEANS: I say I imagine I have reason
16 to ---

17 THE WITNESS: Perhaps you had better ask
18 him. I did not hear him say that.

19 MR. DEANS: I'm going to ask him, but I
20 just wondered how you could be sure that that wasn't
21 said when on other occasions you just can't recall
22 exactly what was said.

23 THE WITNESS: I am sure I can say that
24 I didn't hear him say that.

25 MR. DEANS: But do you recall Mr. Bales
26 asking -- suggesting to Mr. Cauley that in order to
27 qualify for any kind of extended sick benefit it would
28 require a doctor's certificate?

29 THE WITNESS: No, I do not recall hearing
30 that statement.

1 MR. DEANS: What was said? How long was
2 the meeting?

3 THE WITNESS: Oh, I don't suppose it was
4 more than 20 minutes to half an hour.

5 MR. DEANS: What was said during the course
6 of the meeting? Did Mr. Cauley walk in and say, "I have
7 this decided to pack the whole thing," or what seemed
8 to trigger his statement, "You want me to quit?" or was
9 that what he said?

10 THE WITNESS: No, he said, "You want me
11 to retire?" Well, as I recall the meeting opened with
12 a reference by Mr. Bales to the fact, which was no
13 secret, that Mr. Cauley had come to see me on a previous
14 Saturday or Sunday and that he had expressed concern
15 about his health and Mr. Cauley confirmed that this had
16 indeed taken place and that as I recollect went on to
17 describe the health situation, referred to the fact that
18 his doctor had apparently advised him to take it easy
19 during that month and that he and his wife had been
20 talking about the situation and he thought that maybe the
21 time had come to retire.

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1 Somewhere just before that -- no, that
2 came after he said to the minister, the minister had
3 expressed concern about his health. Mr. Cauley said,
4 "You mean he wants me to retire?" and the minister said,
5 "No, that is your decision," and then Mr. Cauley went on
6 to describe the problem/^{he} and his wife had discussed as
7 retirement being perhaps the only alternative, and then
8 the question of sick leave and vacation came up. I
9 didn't make any note of it.

10 MR. DEANS: It's hard to remember what
11 happened three years ago. I couldn't remember it.

12 THE WITNESS: I must admit at the time I
13 never thought -- there was nothing untoward at the time.

14 MR. DEANS: During the other occasions
15 that Mr. Cauley visited with you, did he ever discuss
16 his concern over the Chairman of the Board not sitting
17 in on the hearings?

18 THE WITNESS: No, he did not.

19 MR. DEANS: To your knowledge was that ever
20 brought to the attention of the minister?

21 THE WITNESS: I recall that in 1965 -- I
22 seem to recall being aware and I don't know who told me
23 that the plan was that Mr. Legge would for a period of
24 time familiarize himself with the work of the Board and
25 that the other two members would carry the appeal hearings
26 or most of the appeal hearings.

27 MR. DEANS: That was in 1961?

28 THE WITNESS: Yes, but that was at the
29 beginning of Mr. Legge's ten year period other than that
30 I was not aware.

1 MR. DEANS: Any discussion about the
2 attendance -- on the day that he spoke to Mr. Bales did
3 he mention the fact that he felt the workload was unfairly
4 proportioned, that the Chairman of the Board wasn't
5 carrying his share?

6 THE WITNESS: No, he didn't. Mr. Cauley
7 didn't express his grievances on the May 5th occasion,
8 he didn't discuss grievances about that and other things.

9 THE CHAIRMAN: Mr. Miller?

10 MR. MILLER: My questions, Mr. Eberlee,
11 perhaps are in a little different direction. You men-
12 tioned that you yourself had no line authority over
13 the Workmen's Compensation Board; that the minister had
14 the responsibility for the Board. In what sense did he
15 have responsibility for the Board?

16 THE WITNESS: Of course under the Statute
17 the Board has exclusive jurisdiction to exercise the
18 powers that are laid down in the Statute so the Minister's
19 position and the Ministers recognized this that they were
20 responsible for insuring the carriage of any regulation
21 or any recommendation to council to the Cabinet and
22 ensuring the passage of those things there. But the
23 Minister's authority over the Board did not extend in any
24 way, shape or form to any of the decisions that the Board
25 might make or to the administrative structure of the
26 Board operating within the limits of the Act. I presume
27 that in the end of course the Minister's of the government
28 had two courses of action to take in order to control the
29 Board and one is to amend the Statute and the other is to
30 choose the membership of the Board. The Board is like a
court.

1 MR. MILLER: So in effect the three members
2 of the Board are appointments through the Minister?

3 THE WITNESS: They are appointments through
4 the Lieutenant Governor in Council.

5 MR. MILLER: On the recommendation of
6 the Minister?

7 THE WITNESS: On the recommendation of
8 the Minister.

9 MR. MILLER: Under these conditions then
10 does the Minister have anything to do about the regula-
11 tions concerning early retirement?

12 THE WITNESS: Well now, presumably -- I am
13 just supposing, I am just speculating, but I believe
14 that retirement regulations are subject to the approval
15 of the Lieutenant Governor in Council.

16 MR. MILLER: These are the ones of the
17 Workmen's Compensation Board?

18 THE WITNESS: These cover the retirement
19 plan, the pension plan of/ the Workmen's Compensation Board,
20 I believe that to be the case.

21 MR. MILLER: Do you know whether in fact
22 the regulations that govern Mr. Cauley's sick benefits
23 and vacation credits were in effect on May 5th, or were
24 they created?

25 THE WITNESS: That I don't know.

26 MR. MILLER: One thing that concerns me
27 and I assume concerns some of the other members, is that
28 such great detail concerning a day off here and a day
29 off there was related in yesterday's testimony in terms
30 of the accumulation of the vacation credits by Mr.
Cauley, that I find it difficult to understand at a time

1 | like this he wouldn't have gone into greater detail about
2 | conditions of retirement.

3 | THE WITNESS: Yes, I share that surprise.

4 | MR. MILLER: This was not discussed in any
5 | detail to the best of your knowledge?

6 | THE WITNESS: No.

7 | MR. MILLER: Are the retirement and the
8 | sick benefit regulations of the Workmen's Compensation
9 | Board the same as those that apply to the Civil Service?

10 | THE WITNESS: I really couldn't say without
11 | examining the two side by side.

12 | MR. MILLER: Let me ask one specific
13 | question. In the Civil Service have you rights to
14 | accumulate unused vacation credits without limit?

15 | THE WITNESS: There are I think at least
16 | three rules applying, depending on when you entered the
17 | Service. When I entered the Service one accumulated
18 | X amount per month and one accumulated a full credit,
19 | and then at the end -- one could take 50% up to six
20 | months. There have been a couple of changes in that
21 | applying to people who are in the Service at different
22 | periods based on arbitration awards arising from
23 | collective bargaining within the Service.

24 | MR. MILLER: I was led to believe by
25 | a gentleman on the Civil Service Commission that on
26 | retirement one could not take more than the holiday credit
27 | owed over the last 18 months of your employment.

28 | THE WITNESS: I am not familiar with that
29 | regulation, but I believe that if I were to walk out
30 | of here this afternoon and be struck down by a streetcar

1 and I were just almost be on a retirement age basis
2 I could stay on sick leave and exhaust my sick leave
3 and then go on retirement.

4 MR. MILLER: It was the vacation part of
5 it that I was particularly interested in.

6 THE WITNESS: I believe there is a general
7 rule that you can't accumulate more than 31 days. In
8 some ministries there is a degree of flexibility given
9 to the departmental administration to determine a maximum.

10 MR. MILLER: Would it seem to you that
11 there are fairly generous conditions that are now
12 applying at the Board?

13 THE WITNESS: Oh, yes.

14 MR. MILLER: I am also concerned as to
15 the responsibility of the Minister versus the responsibil-
16 ity of his deputy to see that certain things are done the
17 Minister says will be done, and specifically I am re-
18 ferring to his letter of September 9th where he said he
19 would send a copy of the Board order to Mr. Cauley and
20 this was not done. Surely it is the Minister's respon-
21 sibility to see that these things are done?

22 THE WITNESS: Well I should think so, but
23 it's not desirous of me to pass any judgment. I would
24 say so.

25 MR. MILLER: Somewhere between May 5th
26 and May 12th a Board order of the Workmen's Compensation
27 Board was issued, this was in 1969, specifying the
28 terms and conditions under which Mr. Cauley would take
29 his vacation credits. This was very specific, it even
30 allowed for 25 days time to reach 65. Have you any idea

1 who instructed the Board to prepare this?

2 THE WITNESS: Well I believe that after
3 the meeting on May 5th the Minister talked to someone
4 at the Board and told them that Mr. Cauley had
5 come to this conclusion and asked that his entitlement
6 be credited and perhaps you will have to ask him more
7 about that.

8 MR. MILLER: I am finished, Mr. Chairman.

9 THE CHAIRMAN: Any other questions from
10 Committee members?

11 Mr. Allan?

12 MR. ALLAN: Mr. Eberlee, I have been very
13 interested in some of the questions and answers, and
14 I don't know whether it would be fair to ask you very
15 pointedly: as a Deputy Minister of Labour did
16 you feel you had any responsibility with respect to the
17 administration or operation of the Board?

18 THE WITNESS: No, I did not feel I had
19 any responsibility. It was understood that I had no
20 responsibility with respect to the administration of
21 the Board.

22 MR. ALLAN: And that from your memory
23 it was your objective not to become involved in the
24 operations of the Board?

25 THE WITNESS: Yes, sir.

26 MR. ALLAN: Which I think is as it should be.

27 THE WITNESS: I had no jurisdiction in that ar

28 MR. ALLAN: I have been wondering whether
29 you have been giving evidence as a Deputy Minister of
30 Labour or as an expert witness?

1 THE WITNESS: As an observer.

2 THE CHAIRMAN: Have you completed, Mr.
3 Allan?

4 MR. ALLAN: Yes, I am finished.

5 THE CHAIRMAN: Mr. Gaunt?

6 MR. GAUNT: Mr. Chairman, I have several
7 questions I would like to ask of Mr. Eberlee. In your
8 view if the Board wasn't operating properly and you have
9 indicated that that really wouldn't be your concern,
10 Do you think the minister would be concerned about that?

11 THE WITNESS: I wouldn't say wouldn't be
12 my concern. As the Minister's deputy, if somebody came
13 to me and said that something or other would occur in
14 the Board, and I thought it shouldn't occur, it would
15 be my duty to report it to the people that would see
16 that something was done about, which would be namely the
17 Minister as ^{the} starting point for something happening.
18 I am a little off the track I think in answering your
19 question.

20 MR. GAUNT: You felt that as far as the
21 Board operation was concerned there was no impairment
22 of that operation because of the dissention?

23 THE WITNESS: Yes, that was my impression

24 MR. GAUNT: Were you aware of the
25 Chairman's attendance record?

26 THE WITNESS: No, no I was not.

27 MR. GAUNT: Had it been brought to your
28 attention by Mr. Cauley or anyone else?

29 THE WITNESS: No, it was not.

30 MR. GAUNT: So you had no cause to inquire

1 or no reason to suspect that his attendance record was
2 not good?

3 THE WITNESS: No, I did not have.

4 MR. GAUNT: Just to move off that slightly,
5 were you aware that there were very severe differences
6 between Mr. Cauley and Mr. Hamilton? Had Mr. Cauley
7 mentioned in his conversation to you either on the
8 Saturday or during your meeting with the Minister and Mr.
9 Cauley of differences with respect to ---

10 THE WITNESS: Mr. Hamilton at that time
11 was Secretary Treasurer of the Ontario Federation of
12 Labour and I had never to my recollection spoken to Mr.
13 Hamilton at that time about either the Board or Mr.
14 Cauley, nor spoken to Mr. Cauley about Mr. Hamilton. I
15 don't remember the name coming up in the conversation.

16 MR. GAUNT: The reason I asked, Mr. Cauley
17 mentioned specifically that he had indicated to you in
18 reference to the Saturday meeting which he had at your
19 home, and his quotation is, "Before you make any further
20 commitments with Douglas Hamilton check with Leslie
21 Frost and see what Leslie Frost has to say." You don't
22 recall that?

23 THE WITNESS: No, I don't recall Mr.
24 Cauley saying that.

25 THE CHAIRMAN: Have you completed, Mr.
26 Gaunt?

27 MR. GAUNT: Yes.

28 MR. DEANS: What you are saying is it is
29 not that you think he did say it, you are saying he didn't
30 say it.

1 THE WITNESS: I am saying he did not say
2 that to me.

3 MR. DEANS: I just want to clear it up
4 because it is exactly the point I wanted to raise. You
5 did not at any time speak with Doug Hamilton prior to
6 the resignation of Jack Cauley from the Board about the
7 possibility of Mr. Hamilton or anyone else becoming a
8 member of the Board?

9 THE WITNESS: No, I did not; I did not.
10 It was not my place to discuss who might be a member of
11 the Board with anybody.

12 MR. DEANS: Did you ever discuss the
13 Board's operations with Mr. Hamilton?

14 THE WITNESS: I don't believe I did, no.

15 MR. DEANS: Did Mr. Hamilton ever discuss
16 it with you?

17 THE WITNESS: No, he didn't. I know that
18 I did discuss it with Mr. Craigs who was then I think
19 Director of Welfare for the Federation of Labour on a
20 couple of occasions how the appeal system was operating,
21 because I was concerned with the reports that Mr. Cauley
22 had made to me. Mr. Craigs was quite intimately familiar
23 I believe with the appeal system.

24 THE CHAIRMAN: Other members?

25 Mr. Lawlor?

26 MR. LAWLOR: The central core of the
27 allegations where your name comes up, Mr. Eberlee, from
28 Mr. Cauley's ^{mouth is} ~~spn~~ Page 25 of the report. Mr. Cauley says,
29 "Well, the only thing I said to him and he recalled this,
30 I am sure, because Mr. Eberlee was with him, I turned to

1 Mr. Eberlee. First I went to Mr. Eberlee's home the
2 Sunday before and he was putting up a garden shed when
3 I arrived and I said, 'Tom, your Minister is in real
4 trouble and I think the only way out of this is for you
5 to see that he has a meeting with the full Board.' This
6 was the second request^{that}/I had made."

7 First of all, have you any idea what he
8 was talking about when he said your Minister was in
9 real trouble?

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1 THE WITNESS: No, sir, I had not.

2 MR. LAWLOR: Were you aware at the time
3 there was a considerable furor to say the least arising
4 out of the Provincial Secretaries estimates and his relation
5 with the Indians and that a number of people in his
6 department enmasse had resigned?

7 THE WITNESS: I was aware of that furor
8 but I don't remember connecting these two events in any
9 way, shape or form.

10 MR. LAWLOR: On the basis of that statement
11 you didn't connect?

12 THE WITNESS: I don't think he said that.

13 MR. LAWLOR: Do you remember him asking
14 you to use your good offices to obtain a meeting of the
15 full Board?

16 THE WITNESS: I know on one or two occasions
17 he had said to me that what ought to happen was there should
18 be a meeting of the full Board with the Minister, yes, he
19 said that. I communicated that to the Minister.

20 MR. LAWLOR: For what purpose?

21 THE WITNESS: To discuss the appeal system.

22 MR. LAWLOR: And only the appeal portion
23 as far as you believe?

24 THE WITNESS: That would be my recollection.

25 MR. LAWLOR: In this morning's testimony you
26 replied to him along the lines that surely he should deal
27 with his fellow members of the Board and straighten these
28 various matters out in internal consultation. Would he
29 have not indicated to you that that was a fairly hopeless
30 venture.

THE WITNESS: Yes, he did. He indicated to

1 me that the appeal system was supported by the majority
2 of the three members of the Board.

3 MR. LAWLOR: Would he have not indicated
4 more? Would he have not indicated disgruntlement with the
5 fact that the Chairman was absent unconscionably and he
6 was having to carry the load of the work, had done so
7 for many years and that it was impossible as far as he
8 was concerned to talk to that Chairman?

9 THE WITNESS: No, he didn't.

10 MR. LAWLOR: No intimation of this at all?

11 THE WITNESS: He didn't intimate those
12 things to me. His criticisms of Mr. Legge were of a
13 general and rather personal nature. I was always at
14 somewhat of a loss to come to grips with what the whole
15 thing was all about frankly.

16 MR. LAWLOR: Did you ever at anytime discuss
17 with your Minister your being at a loss in this regard?

18 THE WITNESS: Yes, I did.

19 MR. LAWLOR: Did you have any conversation?

20 THE WITNESS: Yes, I did. That was one of the
21 motivations for the meeting on the 5th of May.

22 MR. LAWLOR: But prior to May?

23 THE WITNESS: Pardon?

24 MR. LAWLOR: This had been going on for a
25 considerable period of time and a time prior to that?

26 THE WITNESS: Oh yes, and the Minister did
27 see Mr. Cauley, I believe, on certain occasions.

28 MR. LAWLOR: Did you think inside the
29 department between you and the Deputy and the Minister
30 a fairly intolerable situation?

1 THE WITNESS: No, I don't think so. I
2 didn't feel that it was an intolerable situation. I felt
3 Mr. Cauley had it within his own hands to go a long way
4 towards correcting the situation.

5 MR. LAWLOR: You have very high levels of
6 tolerance, Tom. Being the ^{Deputy} Minister of Labour, I suppose
7 you may develop a certain hard skin.

8 Turning to the actual meeting, if I may
9 refer to page 50 of the text here and Mr. Bales is speaking
10 to the Committee:

11 "Mr. Chairman, I have to say, I think in
12 fairness, the members of the Board should
13 be heard today, because there's been a
14 certain statement about them. But in
15 reference to the resignation, the matter
16 was discussed with Mr. Cauley - and I'll
17 be dealing with this later on - but he was
18 to be paid in accordance with the policy
19 of the Board - the salary calculated on
20 the basis - all right, of your sick credits.
21 They were credits due you."

22 -- I would take it from that statement of the Board that
23 evidently this was a matter that Mr. Bales and Mr. Cauley
24 spoke about on that occasion because he brings it up
25 specifically in his recollections of a day or two ago.
26 Would you refine your recollections on that particular
27 point?

28 THE WITNESS: I don't follow the question,
29 sir, because I did say earlier that Mr. Cauley said to the
30 Minister at the meeting that he had a certain accumulation

1 of sick credits and a certain accumulation of vacation
2 credits; but he also had a period of time to go before he
3 was eligible for the pension on the full basis or whatever
4 the basis was. I don't want to be a technical or expert
5 witness on that score and that he expected to receive
6 these credits in order to fill in the gap.

7 MR. LAWLOR: Vacation credits were
8 discussed. Now, tied in intimately with that would be
9 the business of a medical certificate because his sick
10 credits would be severely cut back were he not to obtain
11 a medical certificate. Was there any discussion arising
12 out of the discussion of sick credits as to the effect of
13 what the sick credits would be?

14 THE WITNESS: No, there was not; there
15 really was not. My interpretation of the discussion is
16 that Mr. Bales accepted Mr. Cauley's statement that he
17 was unwell and that on that basis he was going to submit
18 his resignation.

19 MR. LAWLOR: Without a medical certificate
20 forfeiting many, many days of getting six months of those
21 credits but that was never mentioned?

22 THE WITNESS: No.

23 MR. LAWLOR: Also intimately tied in with
24 this in Mr. Cauley's mind at least and on the evidence
25 is. if he were going only to have to rely upon these
26 credits then he had a diverse number of other modes of
27 employment that he could turn to was the fact that he
28 could have gone back to railroading not brought up at all
29 in that discussion?

30 THE WITNESS: No, it wasn't brought up at

1 all in that discussion.

2 Of course Mr. Cauley could have, I presume,
3 changed his mind about the arrangement in the last -- at
4 any time since the 5th of May, 1969. If he had
5 calculated it was more advantageous for him to quit and
6 to take the sick credits and to go on the railroad he
7 would have been perfectly free presumably to do that. I
8 am just speculating.

9 MR. LAWLOR: Unless some deal was made
10 with respect to salary situation. Was there?

11 THE WITNESS: No, no deal was made with
12 respect to the salary situation but of course anybody who
13 is on sick leave becomes entitled in the long course of
14 events to a salary increase that would occur during that
15 period. It is not unusual.

16 MR. LAWLOR: But he was given no assurances
17 that he could remain in office until he reaches his 65th
18 birthday in August of 1970 in your presence?

19 THE WITNESS: I beg your pardon?

20 MR. LAWLOR: He was given no assurances that
21 he would be able to remain on salary with full benefits
22 until August of the following year?

23 THE WITNESS: Well, sir, the implication
24 of Mr. Cauley's statement that he had these credits, of
25 his statement that he hoped to be able to use credits until
26 he was eligible for pension and so on is that he would
27 stay on salary or sick credits or salary until he was
28 eligible for the pension.

29 MR. LAWLOR: Did you know of an arrangement
30 of that kind affecting Dr. Steele?

1 THE WITNESS: No, I did not.

2 MR. LAWLOR: Did you know of any other
3 arrangement of that kind affecting anybody else?

4 THE WITNESS: No, I did not with respect
5 to the Board.

6 MR. LAWLOR: This would have been an
7 extraordinary settlement so far as you are concerned?

8 THE WITNESS: No, I wouldn't say it was
9 extraordinary. I wouldn't consider it as extraordinary.

10 MR. LAWLOR: May I use the word unique because
11 there is no other incident as far as you are concerned?

12 THE WITNESS: It was the first time I ever
13 sat in when a member of the Workmen's Compensation Board,
14 decided to retire. It doesn't happen very frequently but
15 I wouldn't give any unusual interpretation to the
16 situation.

17 MR. LAWLOR: Was that the understanding that
18 was left as far as you are concerned?

19 THE WITNESS: When you say that, sir.

20 MR. LAWLOR: The understanding with respect
21 to continuing on salary until he reached 65 years of age.

22 THE WITNESS: The understanding was that
23 he would exhaust his credits, that he would exhaust the
24 credits to which he was entitled and he had put to
25 Mr. Bales that they would bring him up to the point where
26 he was eligible for pension. That was the understanding.
27 It was, I suppose, subsequently confirmed when computation
28 was made as to how much was coming to him.

29 MR. LAWLOR: Now this meeting occurred in
30

1 your presence apparently on the 5th day of May, '69, exactly
2 three days later a Board order was issued which again on
3 the evidence was issued through the instrumentality of
4 the Minister, Mr. Bales, in consultation with the Board
5 I think that is at page 51 of the evidence -- in that
6 order it states that "after retirement in 1971 a
7 consultancy fee will be established for one year." Now
8 this was three days later. Was the consultancy fee
9 discussed on the 5th?

10 THE WITNESS: I don't believe it was; I
11 don't believe it was discussed. I believe that it was
12 Mr. Bales' idea that perhaps Mr. Cauley's knowledge on
13 the background of the Board might conceivably be used in
14 the future but I don't believe it was discussed.

15 MR. LAWLOR: After Mr. Cauley left the room
16 on that day, May 5th, did you have any further consultations
17 with your Minister as to what terms and conditions might
18 apply to his retirement?

19 THE WITNESS: No.

20 MR. LAWLOR: You withdrew immediately?

21 THE WITNESS: Yes.

22 MR. LAWLOR: There is a further statement
23 on the health situation which you say was discussed over
24 and over again, the statement of Mr. Cauley at page 28,
25 he's talking about three letters: "Now again let me say
26 I believe Mr. Bales' implicitly. We talked about the fact
27 I couldn't get a medical certificate and you said -- as you
28 know he said:" "Your health looks exceptionally good"
29 and I said to him because at this time there was a hassle
30 in the Provincial Secretaries Department of Indian Affairs
if you will recall, Dalton."

1 MR. LEWIS: The Government nearly fell."

2 Do you remember the Minister saying that Mr. Cauley
3 appeared to be in fine health?

4 THE WITNESS: No, I do not remember the
5 Minister saying that, I do not remember the Minister saying
6 that. I can't say that Mr. Cauley did appear to be in
7 fine health. Mr. Cauley appeared to be rather drawn and
8 wan as I recall.

9 MR. LAWLOR: Did you have anything to do
10 subsequently with the fact of the retroactive increase in
11 salary which is set forth in Mr. Bales' letter of
12 September 9th, in which he says to Mr. Cauley:

13 "Since you were Vice-Chairman of the Board
14 at that time this change in effect of
15 salary would be applicable to you from
16 the period October 1st, 1967 up until the
17 date of your normal retirement."

18 Do you know anything about that at all?

19 THE WITNESS: Only that it happened. There
20 was other participation. I was aware there had been a
21 study and as a result of that management study the salary
22 levels were changed.

23 MR. LAWLOR: I am going to ask Mr. Bales a
24 question too but I am interested in the problem of the date
25 of one's normal retirement. You are cognizant of the fact
26 that Mr. Cauley's normal retirement on one interpretation
27 of the phrase might be 1975?

28 THE WITNESS: Yes, I am aware. But again, I
29 am afraid that I am not aware of the technicalities of the
30 Compansation Act in respect of retirement age. I heard
certain evidence that took place here yesterday; I know

1 no more than anyone else that heard that evidence.

2 MR. LAWLOR: I'm sorry, it might be 1980.

3 I think those are all the questions I have.

4 Thank you, Mr. Chairman.

5 THE CHAIRMAN: Mr. Lewis?

6 MR. LEWIS: Mr. Eberlee, the arrangement
7 wasn't conclusive in the office on May 5th, I take it?

8 THE WITNESS: Well, conclusive to the
9 extent that I have a recollection the Minister said
10 Mr. Cauley would get whatever he was entitled to, inclusive
11 to that extent.

12 MR. LEWIS: Get what he was entitled to?

13 THE WITNESS: Yes, in other words, he would
14 not be given nothing more than.

15 MR. LEWIS: Jack Cauley may have interpreted
16 that as, "You won't lose, Jack."

17 THE WITNESS: Perhaps.

18 MR. LEWIS: But the entitlement wasn't
19 spelled out in specific terms on May 5th?

20 THE WITNESS: No. Certainly I had no
21 knowledge of the precise terms of that entitlement. As
22 far as I was aware the Minister wouldn't have known what
23 that entitlement was because he didn't know Mr. Cauley
24 was going to decide at that meeting that he should retire.

25 MR. LEWIS: But you felt that retirement
26 was certain at the point at which he left the meeting?

27 THE WITNESS: Oh yes.

28 MR. LEWIS: Are you aware that subsequent
29 to that date it has been shown demonstrably that the
30 computation of sick credits and vacation pay still left

1 Mr. Cauley some 20 or 25 days short of retirement?

2 THE WITNESS: I have heard certain
3 testimony that has been given here, yes.

4 MR. LEWIS: And you would say that on
5 May 5th Mr. Cauley was clearly not aware of the possibility
6 of a year-long consultancy fee?

7 THE WITNESS: I would say he was not aware
8 of that, yes.

9 MR. LEWIS: Do you not think it is strange,
10 Mr. Eberlee, that the Board order passed on May 8th was
11 never communicated to Mr. Cauley since he was clearly not
12 aware of his exact entitlement on May 5th?

1/1

1 THE WITNESS: That is sort of a speculat-
2 ive question. If you had asked me I would have thought
3 Mr. Cauley would have perhaps known the terms. I pre-
4 sume he does know the terms.

5 MR. LEWIS: He does now I think.

6 THE WITNESS: Yes.

7 MR. LEWIS: But it wouldn't have seemed a
8 normal matter of course to you that a Board order affect-
9 ing the next two and a half years of a man's life in
10 terms of income including a clause with which he had
11 no familiarity at all, it doesn't seem natural to you
12 that that should be communicated to the man?

13 THE WITNESS: I must admit that I
14 only known within the last three weeks that the subject
15 was dealt with by way of Board order and I would imagine
16 that Mr. Cauley was thoroughly familiar with the terms
17 and conditions of the pension plan. I can't say that
18 it seems strange. I really have a neutral reaction, frankly

19 MR. LEWIS: A neutral reaction?

20 THE WITNESS: A neutral reaction. I can't
21 say it seems strange to me or not strange. You will have
22 to ask why the order was not communicated directly to
23 those who were responsible in handling the matter directly.

24 MR. LEWIS: If you as Deputy Minister had
25 had a line responsibility for the Workmen's Compensation
26 Board would you, if you will forgive a hypothetical
27 question, have communicated the precise terms to Mr.
28 Cauley?

29 THE WITNESS: I probably would have, yes.
30 I don't know what that means.

/2

1 MR. LEWIS: I know what it means. You
2 would have informed him of his entitlement I would presume?

3 THE WITNESS: Right.

4 MR. LEWIS: You know the Minister wrote
5 Mr. Cauley a letter in September?

6 THE WITNESS: No, I did not know that.

7 MR. LEWIS: But you know it from the last
8 Hearing?

9 THE WITNESS: I know it now.

10 MR. LEWIS: You saw the letter tabled which
11 indicated that a copy of the Board order setting out
12 the terms of termination would follow to Mr. Cauley?

13 THE WITNESS: Yes.

14 MR. LEWIS: You cannot explain or cannot
15 imagine why that wouldn't have happened?

16 THE WITNESS: I can't explain. I would think
17 the persons directly involved would have to be asked
18 that.

19 MR. LEWIS: It is I suppose then possible,
20 Mr. Eberlee, in the light of no subsequent confirmation
21 whatsoever and in the light of terms decided upon which
22 were quite unusual -- I refer to the consultancy -- it
23 is possible that Mr. Cauley's interpretation of the meet-
24 ing given no subsequent definition is as valid I suppose
25 as any other interpretation?

26 THE WITNESS: I would suspect that Mr.
27 Cauley was pretty clear about what his entitlement was.
28 Mr. Cauley was always very careful to keep records.

29 MR. LEWIS: Mr. Miller made that point and
30 yet there was nothing specifically set out apparently.

3
1 That is what is surprising about the whole situation.
2 almost obsessive attention to
3 Given this scrupulous/compulsive/detail and credits
4 that it wasn't set out in that fashion.

5 Tell me, Mr. Eberlee, you were not in a
6 line fashion responsible for the Workmen's Compensation
7 Board, but you were pretty keenly aware, I take it, of
8 the dissention which existed at least at the top?

9 THE WITNESS: Mr. Cauley had told me that
10 (A) in effect that he wasn't a friend of Mr. Legge's and
11 (B) that he had outlined to me on several occasions his
12 attitude toward the appeal system, yes. But it was not
13 confirmed by Mr. Legge. Mr. Legge never talk to me as
14 such.

15 MR. LEWIS: You didn't hear any rumours
16 or rumblings about the Board in its functioning in that
17 period of time?

18 THE WITNESS: Well, one always hears rumours
19 and rumblings about the functioning of any institution,
20 but I heard nothing that was of any significance or
21 consequence as far as I was concerned, nothing that gal-
22 vanized me into action in any direction.

23 MR. LEWIS: Am I right in recalling that
24 you sat at the table in front of the ministers during
25 estimates when the Workmen's Compensation Board came
26 before the legislative committee in those grand old days
27 when it still came before the legislature?

28 THE WITNESS: Last June, yes, I sat in a
29 corner, yes.

30 MR. LEWIS: In the days of Leslie Rowntree
you weren't relegated to a corner as I recall, you were

1 there right in front of the Minister.

2 THE WITNESS: I think when the Board came
3 along I disappeared because I wasn't in no position to
4 provide any answers.

5 MR. LEWIS: You were not in any line
6 authority over the Board in a position to provide
7 answers, only the Minister was and yet in the year 1968
8 there is not yet one whole Board meeting with the
9 Minister? Do you not think that a most extraordinary
10 absence of contact?

11 THE WITNESS: No, I don't, because I
12 suspect, in fact I used to see the chairman there period-
13 ically, I suspect that the Board reported to the Minister
14 through the chairman which, of course, is the usual
15 practice. I am a member of a commission myself, Civil
16 Service Commission, and the full Commission does not meet
17 with the minister to whom it reports, rather the chair-
18 man carries that. That is an understood function for
19 the chairman of a commission.

20 MR. LEWIS: But the Civil Service
21 Commission as I recall reports to the legislature through
22 estimates?

23 THE WITNESS: It reports to the Chairman
24 of Management Board.

25 MR. LEWIS: The Workmen's Compensation
26 Board is in a slightly different position in terms of
27 statute?

28 THE WITNESS: That is correct, yes. But
29 it is not unusual for / chairman of a commission to be
30 the link between the body and the minister who has the

L/5 1 function of that so I don't interpret it as a peculiar
2 situation at all.

3 MR. LEWIS: That a three man board not meet
4 with a minister of cabinet for an entire year?

5 THE WITNESS: Well, I don't know whether
6 that is the case or not, but it would not be a matter of
7 surprise to me.

8 MR. LEWIS: Thank you, sir.

9 MR. BULLBROOK: I have a couple of
10 questions and I don't know really whether, Mr. Chairman,
11 they have much probative value, but something that has
12 caused me a technical concern and you can direct me or
13 Commission Counsel can direct me if I shouldn't be
14 asking this question of a Deputy Minister.

15 Relative to the comments made by the leader
16 of the New Democratic Party and the questioning by the
17 Honourable Mr. Allan, although you have no line authority
18 I think you will agree with me that under the terms of
19 the statute the Board under Section 79, Mr. Eberlee,
20 the Board has a responsibility at the close of each year
21 of filing with your Minister an annual report upon the
22 affairs of the Board and the minister has a responsibility
23 to submit that report to the Lieutenant Governor in
24 Council and to lay the report before the assembly.

25 You have no function duty or responsibility
26 in connection with that statutory obligation on the part
27 of your minister?

28 THE WITNESS: That is correct.

29 MR. BULLBROOK: You don't?

30 THE WITNESS: I do not have.

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MR. BULLBROOK: You don't deal with the Board at all?

THE WITNESS: I don't.

MR. BULLBROOK: Perhaps you cannot answer this question for me. Under Section 2 of the Act it reads, "Salaries of the members shall be fixed by the Lieutenant Governor in Council and are payable out of the accident fund as part of the administration expenses of the Board."

My understanding is that Mr. Cauley after his resignation received two increases in what you call salary.

THE WITNESS: Well, sir, I really can't answer anything of a technical nature with respect to your question.

MR. BULLBROOK: Perhaps you are presuming a technical nature. Did he or did he not receive two increases after his resignation?

THE WITNESS: I do not know really any more than the testimony here. I was aware that the increase had gone through at that time and of course I assumed that it went through with the approval of the Lieutenant Governor in Council.

MR. BULLBROOK: So that in connection with my former line of questioning you feel that you have no responsibility notwithstanding the duties of your minister to deal with the report of the Workmen's Compensation Board to the Legislature of Ontario?

THE WITNESS: Yes, that is right.

1 MR. LEWIS: May I ask to have the confusion
2 cleared up just very quickly, Mr. Eberlee?

3 Mr. Eberlee, the meeting took place on
4 May the 5th when your retirement was first mentioned, I
5 gather?

6 THE WITNESS: Yes.

7 MR. LEWIS: And the letter of resignation
8 came on May 12, 1969?

9 THE WITNESS: Yes.

10 MR. LEWIS: The Order in Council that was
11 passed in January of 1970 fixed the date of resignation
12 as May 1st, 1969. Why was that?

13 THE WITNESS: I can't explain that. Perhaps
14 you should examine the letter of resignation which may
15 provide the key. I do not know the answer, I am sorry.

16 MR. BULLBROOK: I would like to establish
17 on the record as a member a request of Commission Counsel
18 to investigate the application of Section 62 as to whether
19 in effect the retroactive increases in salary were within
20 the legislative right of the Workmen's Compensation
21 Board.

22 MR. DONNELLY: I think that point was ---

23 MR. BULLBROOK: Was it covered already?

24 MR. DONNELLY: Excuse me, Mr. Bullbrook, I
25 think it was originally / ^{raised} as I read the transcript by
26 Mr. Cauley in his submission of April 5th and I will be
27 pleased to do what I can in that respect.

28 THE CHAIRMAN: Are there any other questions
29 from the Committee or other members?

30 Does counsel for Mr. Cauley wish to question

1 the witness through Committee Counsel?

2 MR. DONNELLY: There is one question Mr.
3 Miller asked and I thought the answer may have been
4 and
5 ambiguous. / I just didn't understand and maybe the
6 witness could clear it up for me. Mr. Miller inquired
7 about the Minister's letter of September 9 in which he
8 said that he would write again and send a copy of the
9 order. Mr. Miller asked, if I understood him correctly,
10 the Deputy's or the Minister's responsibility to follow
11 up on that to see that it was done and I understood your
12 answer to be that it was the Minister's responsibility?

13 THE WITNESS: Yes.

14 MR. DONNELLY: In that respect, sir, I'm
15 simply asking this question. Was that in a reference
16 that the Minister's responsibility arose from his state-
17 ment that he would do so or did you mean to convey the
18 intent that in the first instance the Board order should
19 instead of going directly from the Board to the person
20 should go from the Minister to the person?

21 I wasn't sure in what context you meant
22 the answer.

23 THE WITNESS: What I really meant was that
24 any correspondence with a member of the Board was the
25 Minister's responsibility, not the Deputy's.

26 MR. DONNELLY: Pardon me?

27 THE WITNESS: I said what I meant was that
28 any correspondence with a member of the Board or respect-
29 ing the Compensation Board was basically the Minister's
30 responsibility and not the Deputy's.

MR. DONNELLY: Were you comparing the

1 responsibility of the Minister as opposed to the Board
2 to send that notice to Mr. Cauley in the first instance
3 or a copy of the order?

4 THE WITNESS: I wasn't commenting on who
5 would have set up the order, I don't know.

6 MR. DONNELLY: Thank you, sir.

7 Mr. Eberlee, I have been asked by counsel
8 for Mr. Cauley to put this question to you: There was
9 some general question about dissention on the Board and
10 relating particularly, I think, to dissatisfaction with
11 the appeal procedures. Are you aware of any briefs from
12 labour organizations opposing the change in the appeal
13 procedures?

14 THE WITNESS: Yes, I believe there were
15 such representations over a period of time.

16 MR. DONNELLY: Passing through your hands or
17 you just had knowledge of it?

18 THE WITNESS: I had knowledge of them.

19 MR. DONNELLY: So that the opposition to the
20 appeal -- the change in the appeal procedure wasn't simply
21 Mr. Cauley's own problems?

22 THE WITNESS: Oh, no.

23 MR. DONNELLY: There was some other substan-
24 tial area of thought backing him up in that regard?

25 THE WITNESS: Yes, that's correct.

26 MR. DONNELLY: I am also asked to put this
27 to you, sir, that if you could be more specific as to what
28 it was about Mr. Cauley's appearance or conduct that left
29 you with the impression that he was ill? As I recall it
30 you said he was wan and drawn and you also made some

1 reference to his conduct in your garden a week or five days
2 further
3 before. Can you give us any/information about that?
4

5 THE WITNESS: Yes, I said he was upset
6 and disturbed. Well, the conversation tended to be a
7 bit incoherent. I made reference to this file of
8 documents purporting to show Mr. Cauley's earlier
9 political involvements and so on and Mr. Cauley made
10 some reference and it was not the first time I had
11 heard this reference and this was in the context of a
12 feeling which he expressed to me that Mr. Legge was
13 sort of looking down his nose at Mr. Cauley; and as I
14 say, Mr. Cauley told this story and it was about the
15 third or fourth time I had heard it, something associat-
16 ed with family descent from Mary, Queen of Scots.

17 MR. DONNELLY: On whose part was that, sir?

18 THE WITNESS: On Mr. Cauley's part.
19 some of
20 Putting these things together I had some difficulty
21 in grasping what was going on and what it was all about
22 and I concluded that he was agitated and highly upset.

23 MR. DONNELLY: I don't know whether you
24 are actually competent to answer this but I've been
25 asked to put this to you.

26 to you
27 Was there any indication/of a physical
28 illness that would indicate to you that he was not
29 with
30 competent to carry on his duties / the Board?

1 THE WITNESS: During that discussion in
2 my garden he did make reference back to the heart attack
3 in 1965. I cannot remember the precise words but I
4 had the impression that he was concerned that there
5 might be a repetition of that previous heart attack.

6 MR. DONNELLY: Anything further, sir?

7 In the May 5th meeting, sir, do you
8 have any recollection of Mr. Cauley expressing concern
9 for his financial position if he retired and asking
10 for any recognition as a result of his long years of
11 service with the Board?

12 THE WITNESS: No, not other than in the
13 context stating that he had these accumulations that I
14 have referred to earlier, and that he did want to place
15 himself in a position where he might be eligible for
16 the pension at the end of a period when these accumulations
17 were exhausted.

18 MR. DONNELLY: I have been asked to put
19 this to you quoting from Hansard on March 14th, "at that
20 time he expressed concern to me as to his own financial
21 situation, he expressed the hope that he would recognize
22 his long years of service." Can you make any comment
23 about that, sir?

24 THE WITNESS: Well I would certainly say
25 that that was consistent with his statement about his
26 credits and about his eligibility for his pension. That
27 he had been with them for 25 years and he would be eligible
28 for a pension at a certain stage.

29 MR. DONNELLY: I have been asked to put
30 to you this, sir: the benefits that you have just

1 mentioned, would Mr. Cauley, not be entitled to them in any
2 event if he could just walk out the door that minute I
3 suppose. I think we have been through that here before
4 that I think there is a six month's limitation without a
5 medical certificate on the accumulated sick leave.

6 Another thing I am asked to put to you,
7 sir, do you recall any mention at that May 5th meeting
8 of any salary increase that was in the works but not
9 yet authorized, whether that should be made retroactive
10 and should apply to Mr. Cauley, if did in fact come
11 through?

12 THE WITNESS: No, I don't recall mention
13 of that, but of course the rule would have provided for
14 such to be the case.

15 MR. DONNELLY: I think you touched on that
16 before, did you, sir?

17 THE WITNESS: Yes.

18 MR. DONNELLY: I am also asked to put this
19 to you: reading again from the Hansard on Page 367 on
20 March 14th, "He expressed the hope to me that since it would
21 become effective normally while he was a member of the
22 Board he should receive any retroactive provisions that
23 were made in reference to those salary adjustments."
24 Do you have any recollection of that, sir?

25 THE WITNESS: I don't have any recollection
26 of that at that meeting.

27 MR. LAPKIN: Thank you, Mr. Chairman.

28 MR. DONNELLY: I have been asked to put
29 this question to you, sir, and who has said they have
30 been descended from Mary Queen of Scots, who says so?

1 THE WITNESS: Mr. Cauley's story was that
2 his family was having this to say. As I say, he told
3 some of us this story three or four times.

4 MR. LEWIS: You have no objection to that,
5 Mr. Eberlee?

6 THE WITNESS: No, but I didn't see it
7 was particularly material to the matter at hand.

8 THE CHAIRMAN: Mr. Deans has a question.

9 MR. DEANS: Did you have any reason to
10 see Mr. Cauley's letter of resignation?

11 THE WITNESS: No.

12 MR. DEANS: The letter of resignation and
13 I don't have it in front of me, but I recall it as
14 saying that he requested to be relieved of his day to
15 day duties as Vice-Chairman of the Board. Reading,
16 "After considerable soul searching with the welfare of my
17 family being paramount, in my view of the doctor's
18 opinion, I find that i must reluctantly request you to
19 relieve me of my duties of Board Vice-Chairman after 39
20 years." That isn't what was read initially. It said
21 in the initial one that he was to be relieved of his
22 day to day duties as Vice-Chairman of the Board.

23 "At this time I have asked to be relieved
24 of my day to day duties and responsibilities as
25 Vice-Chairman of the Board." Do you consider that to
26 be a resignation from the Board entirely?

27 THE WITNESS: I think so, particularly when
28 you read the next sentence: "After considerable soul
29 searching and with the welfare of my family being paramount,
30 and my view of my doctor's opinion, I find that I must

1 reluctantly request you to relieve me of my duties as
2 Board Vice-Chairman after 39 years."

3 MR. DEANS: But he wasn't asking to be
4 relieved or to be required to resign from the Board at
5 all, there is no reference there to resignation from the
6 Board at all. There is in fact a request for a relieving
7 of day to day duties and his wish to relinquish the
8 position as vice-Chairman.

9 THE WITNESS: Sir, if you are asking my
10 opinion if you take the letter as a whole it looks the
11 nearest thing to a resignation letter that I have ever
12 seen.

13 MR. DEANS: I have seen them closer. I
14 have seen people write out "I quit", You know.

15 THE WITNESS: It says, "I can assure
16 that after 39 years connected with Workmen's Compensation,
17 25 of these as Board commissioner, my decision has not
18 been an easy one."
19 If you are asking my opinion, for what it's worth it
20 looks like a resignation.

21 MR. DEANS: I am just asking you whether you
22 see anything there that says he has resigned from the
23 Board.

24 THE WITNESS: Yes, I do.

25 MR. DEANS: You see that as being a
26 resignation?

27 THE WITNESS: I see that letter as being
28 a resignation.

29 MR. DEANS: It is a practice of the Board
30 to have pro tempore members of the Board?

1 THE WITNESS: Yes.

2 MR. DEANS: And it has been a practice
3 of the Board over the years to have up to as many as
4 five members, persons active with the Board at
5 approximately the same time, or at least at the same
6 time and on occasion a sixth, and there are people, Mr.
7 Cross for example, who served in a part time capacity?

8 THE WITNESS: Yes. I am not sure of
9 the numbers but yes, there have been several.

10 MR. DEANS: It is conceivable that he
11 could have been asking to continue in some capacity.
12 He did in fact say that he would be available to help
13 in the letter?

14 THE WITNESS: Yes, consultations.

15 MR. DEANS: Why was that letter never
16 answered?

17 THE WITNESS: I don't know whether it was
18 answered or not. Personally I don't know that it was
19 answered.

20 THE CHAIRMAN: Have you completed, Mr.
21 Donnelly?

22 MR. DONNELLY: Yes, sir; thank you.

23 THE CHAIRMAN: Have all the members?
24 Thank you, Mr. Eberlee.

25 THE WITNESS: Are you finished with me?

26 THE CHAIRMAN: Yes.

27 MR. DONNELLY: Mr. Bales, please.

28 DALTON BALES, called:

29 THE CHAIRMAN: It won't be necessary to
30 swear in the next witness, Mr. Bales, unless you so

1 request.

2 MR. BALES: It is up to the members of
3 the Committee and to the counsel as far as I am concerned.

4 Mr. Chairman, members of the Committee,
5 to assist the members of the Committee I had prepared
6 a brief statement which if it is in agreement I would
7 be pleased to give to the members of the Committee and
8 then answer any questions they desire, but I would be
9 in your hands as to the procedure.

10 THE CHAIRMAN: I think that would be in
11 order, Mr. Bales. It probably would result in a lot
12 of explanation and result in probably not as many questions
13 needed to be asked.

14 MR. LAWLOR: This is immediately before
15 question period.

16 MR. BALES: Is that agreeable to the
17 members?

18 THE CHAIRMAN: Right.

19 MR. BALES: Mr. J. F. Cauley was appointed to
20 the Workmen's Compensation Board in 1944 and was made Vice
21 Chairman in 1951 and continued to serve with the Board
22 for a quarter of a century following his initial
23 appointment.

24 During the time Mr. Cauley was with the
25 Board, the work and responsibilities increased greatly.
26 Mr. Cauley had suffered a serious heart attack in June,
27 1965 and I was advised that this necessitated his absence
28 from his duties at the Board until October of that year.

29 I made a statement in the Legislature on
30 Tuesday, March 14 and consequently this statement will be
brief, and I merely wish to supplement what I have stated

1 in the House having regard to the statements made by
2 Mr. Cauley before this Committee on Wednesday, April 5,
3 concerning Mr. Cauley's retirement.

4 In reference to Mr. Cauley's retirement I
5 was advised by the officials of the Workmen's Compensation
6 Board in mid-April of 1969 that Mr. Cauley's physician
7 had advised the Director of Medical Services at the Board
8 that he had been consulted by Mr. Cauley as to his physical
9 condition and that he considered it wise to refer Mr.
10 Cauley to the cardiac consultant who looked after him
11 following his heart attack several years previous. I was
12 informed that Mr. Cauley would be away from the office
13 for at least two weeks.

14 A few days before my meeting with Mr. Cauley
15 on May 5th or 6th, the Deputy Minister of Labour, Mr.
16 Tom Eberlee, told me that Mr. Cauley had come to his home
17 on the weekend and had told Mr. Eberlee of his concern
18 about his health and whether he could carry on as an effec-
19 tive and full-time member of the Board, in view of his strong
20 differences of opinion over the appeal system. Mr. Eberlee
21 told me of his concern about Mr. Cauley's health as well
22 as the continuing effective administration of the Board in
23 view of the friction over the Board's policies that I had
24 tried to resolve earlier but apparently unsuccessfully.

25 Mr. Cauley, at my request, came to see me
26 in my office on or about May 5th or 6th and Mr. Eberlee
27 was with us. In view of the information which I had
28 been given as to his medical consultations and his
29 conversations with the Deputy Minister, I wanted to
30 inquiry as to his state of health and whether he could

1 continue his duties and responsibilities as Vice Chairman
2 of the Workmen's Compensation Board. I felt that until
3 I had that discussion with him I would not be in a
4 position to determine what course of action I would
5 follow.

6 There were a number of points I wanted to
7 raise and discuss with Mr. Cauley but shortly after the
8 meeting began he offered to resign and since this was
9 obviously on his mind I felt it was the best thing for him
10 to do. I also felt the work of the Board was being
11 impaired by disagreements within the Board.

12 Mr. Cauley mentioned his substantial sick
13 credits that had accumulated over the period of his time
14 at the Board and I had been acquainted with the Board's
15 policy which permitted a senior official nearing retirement
16 to leave active employment at an earlier date and receive
17 the equivalent of salary to the extent of his unused
18 sick leave credits and holiday credits. I told him that I
19 thought it would be reasonable that he be paid the equi-
20 valent of salary on the basis of whatever credits he had
21 with the Board and in line with what I understood to be
22 their general policy. This matter was raised because I
23 realized, and he pointed out, that he was not yet 65
24 and if he retired at that point he would receive a lesser
25 pension than if his retirement came into effect at the
26 normal retirement age of 65.

27 The Government had been reviewing the
28 salaries of its senior personnel with the assistance of
29 the management consultant firm of Hickling Johnston. A
30 request had been made to me for a review of the Board's

1 salaries and also the need for a review of the salaries
2 for senior personnel of the Board as they had not been
3 kept in line with others in comparable positions in business
4 and professions. I suggested to the Board that it might
5 be advisable to retain management consultants and I
6 suggested the Hickling Johnston firm to them because of
7 the work they were doing in the Government itself.

8 I have seen a copy of a minute of the Board
9 dated September 13, 1968, approving the retaining of the
10 consultant firm of Hickling Johnston to review the
11 salaries of the Board and certain principal officers and this
12 minute is signed by the members of the Board, namely
13 Messrs. Legge, Cauley and Johnston. The minute referred
14 to principal officers as designated by Mr. MacDonald and
15 there was a further minute of the Board dated September 27,
16 1968, signed by Messrs. Legge and Cauley approving a list
17 of senior officers to be covered by the study including
18 the Vice Chairman.

19 The management consultant's report insofar
20 as the Board members were concerned had not been finalized
21 when Mr. Cauley met me in my office but we expected this
22 would be completed shortly. This was discussed and he
23 expressed the hope that he would be included and I felt
24 that this was proper and reasonable as I expected the
25 changes to be recommended would be retroactive for a
26 period of time. Admittedly, there were differences
27 with others on the Board over general policies and the
28 appeal system as then organized but I felt his long period
29 of service with the Board should be recognized and that
30 he should be fairly dealt with.

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When Mr. Cauley came to the Board in 1944 his salary was \$6500. and this was increased to \$8500. when he became Vice Chairman in 1951. By 1956 it had increased to \$20,500. and this was his salary in effect in May, 1969.

I told Mr. Cauley that if the Government approved an increase in salary for the members of the Board and it was made retroactive to a period prior to his retirement, I would recommend that he should have the benefit of that increase.

I believe there was some discussion in the same connection concerning his group insurance coverage. I realized the importance of that to him because the coverage would be adjusted in accordance with an increase in salary.

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1 Since I understood that Mr. Cauley had
2 substantial sick credits and holiday credits and would be paid
3 the equivalent of salary for some period of time I
4 expressed the hope that he would assist the Board from
5 time to time if requested and that he would also give me
6 the benefit of his advice on matters that might arise
7 should I request it, pending his going on superannuation
8 when he was 65. Mr. Cauley expressed his willingness
9 and he repeated this in his letter of resignation of
10 May 12th.

11 I knew Mr. Cauley attended a substantial
12 number of meetings in the province as Vice Chairman of
13 the Workmen's Compensation Board and toward the end of
14 the meeting he advised me he was to attend several conferences
15 toward the end of the month and asked whether he should do
16 so. I advised him that if he was attending a conference
17 and speaking as Vice Chairman of the Board when he should
18 not do so when he was resigning from that position. He
19 wrote me a letter which I believe is an exhibit enclosing
20 a copy of a letter to the Firefighters Association which
21 is consistent with the suggestion I made to him. At no
22 time, however, did I tell him he was to restrict his normal
23 activities and not lead a normal day-to-day life.

24 Following the meeting with Mr. Cauley and
25 Mr. Eberlee I advised the chairman of the Board and I
26 think the Executive Manager, Mr. MacDonald, that Mr.
27 Cauley was going to submit his resignation as of May 1st
28 and I told them of my discussions with him. I expected
29 the Board to make applicable to Mr. Cauley their early
30 retirement plan.

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1 I had previously been given some information
2 as to the amount of time he had in credits but I then
3 obtained more definite information from the Board. They
4 indicated that with the payment of the equivalent of salary
5 based on sick credits and holiday credits calculated in
6 accordance with their practices and policies he would
7 receive remuneration until approximately his 65th
8 birthday. It would require some extra days, about a
9 month, and he would then be entitled to full pension at
10 the age of 65.

11 Mr. Cauley wrote his resignation and sub-
12 mitted it to me about a week later and a copy of that
13 resignation has been filed with the Committee.

14 In the summer of 1969 I received a message
15 from Mr. Cauley relayed through the staff of the Board and
16 this was an enquiry as to his payments. I telephoned to
17 him within the next day or two and advised him of the
18 salary adjustment and, as I recall, I informed him that
19 the salary increase had been approved by Cabinet and that
20 I would see that he received a cheque for the retroactive
21 payment from October 1st, 1967 in the near future.

22 I wrote to him at the beginning of September
23 and sent him a cheque together with a statement as to the
24 method of calculation which was provided to me by the
25 Workmen's Compensation Board. I sent it to him rather
26 than through the Board because I felt I had made a personal
27 commitment with respect to the retroactive payment.

28 Mr. Cauley has filed a copy of my letter
29 of September 9th, 1969 and in it it states that I would
30 be writing to him again. He replied by letter of

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1 September 12th and in that he mentioned the Order-in-Council
2 as well as the Board's Order.

3 Following Mr. Cauley's retirement there
4 were two pro tempore members on the Board and consideration
5 had to be given to permanent appointments in the Summer
6 and Fall of that year. These were important posts and
7 I felt that they required thoughtful and careful considera-
8 tion bearing in mind the work involved.

9 The Orders-in-Council related to the
10 resignations of Dr. Steele and Mr. Cauley were passed in
11 January, 1970 and I presume it had been my original
12 intention to send him a copy of that Order-in-Council and
13 the Board Order.

14 Early in 1970 two new appointments were made
15 to the Board, Mr. David Decker, as Vice-Chairman and Mr.
16 Douglas Hamilton, Member. Since so much time had elapsed
17 since September, 1969 I presumed that Mr. Cauley was
18 receiving the monies due to him and he was fully aware of
19 his entitlement and that the Board had been in touch with
20 him advising him of the Board Order or the terms of it.

21 I did not hear from Mr. Cauley from
22 September, 1969 and having received no further enquiries
23 I gave no further thought to the matter. I did not review
24 the file subsequently nor write to him.

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1 MR. DONNELLY: Q. Mr. Bales, touching just
2 on the last sentence of your statement, you say the fire
3 was not subsequently reviewed and no further thought
4 given. Is that relative to your letter of September 9th
5 wherein you had indicated to Mr. Cauley that you intended
6 writing to him, setting out the terms of his payment
7 and sending him a copy of the order?

8 A. Mr. Donnelly, in his letter which
9 came within a day or two days later, September 12th, he
10 referred to the Order-in-Council. That Order-in-Council
11 was not then in existence and I could not send it to him.
12 Had it been, I would have sent it to him at that time.
13 I presume I didn't have a copy of the Board's minutes
14 when I wrote to him on September 9th. The normal thing
15 would be for me to send it to him at that time. I probably
16 and I must have received it subsequently because I do have
17 it now but I did not -- I presume I did not have it at that
18 time or I would have sent it. But I could not send him
19 the Order-in-Council until it was passed.

20 Q. The Order-in-Council was January of
21 1970?

22 A. That is correct.

23 Q. Do I understand you correctly that
24 it was not some deliberate act that you did not get the
25 order, but it was rather in the nature of an oversight?

26 A. Yes, it was not intentional that
27 I did not send it.

28 Q. There was another matter that
29 Mr. Deans touched on earlier when he was examining
30 Mr. Eberlee and that was the resignation letter itself,

1 dated May 12th and reference was made in there to a
2 resignation from the position of Vice-Chairman and the
3 elimination of the day to day duties. There was some
4 question I think phrased as to what the proper interpretation
5 of that was, was it a resignation simply as Vice-Chairman
6 or did it constitute a complete resignation?

7 Can you help us on that?

8 A. In my mind it constituted a complete
9 resignation. There are three members of the Board, the
10 Chairman, the Vice-Chairman and member, and that the Order-
11 in-Council when it is passed appointing a person designated
12 the office or the position to which they are appointed.

13 Q. I am not sure that I fully understand
14 that. You mean could he have resigned as a Vice-Chairman
15 and remained as a Commissioner without a separate Order-
16 in-Council reinstating him as a Commissioner?

17 A. No, he could not. The Order-in-Council
18 appoints a person as Vice-Chairman of the Workmen's
19 Compensation Board. It is not a case of three members
20 being appointed to the Board and they in turn form among
21 themselves appointing the Chairman, the Vice-Chairman,
22 etc.

23 Q. There is another matter, sir, I think
24 you touched on in your statement and that is in connection
25 with a speaking engagement subsequent to the resignation.
26 Mr. Cauley made some rather vague mention of some
27 restriction of his actions or his public actions in any
28 event during this six month period. Can you tell us
29 anything about that, sir?

30 A. I think I endeavoured to touch on it

1 so far as I can, Mr. Donnelly. In his conversation with
2 me he was specifically -- and there is a reference to a
3 letter to the Fire Fighters -- I believe there were two
4 or three meetings that he told me he had been invited to
5 attend -- I think they were all union conventions of
6 employees' conventions and he asked what he should do. He
7 made it clear that when he went to these conventions this
8 was quite proper, he usually spoke to the gathering. And
9 I felt that when he was resigning as Vice-Chairman that he
10 should not go and speak to that convention as the Vice-
11 Chairman of the Workmen's Compensation Board. I don't
12 recall that I told him not to go, that was up to him. I
13 certainly did not tell him that he was to restrict his
14 normal activities.

15 Q. Now, sir, Mr. Cauley pointed out to
16 the Committee that to his recollection he had no knowledge
17 of the Hickling Johnston Management Survey at least as
18 it related to the position of Vice-Chairman and I think
19 in your opening statement you made reference to the
20 documents that were filed at a rather later date and if
21 you didn't know you had an opportunity to know. Do you
22 recall the discussion on May 5th touched directly on that
23 point of the retroactive or the possibility of the
24 retroactive salary increase?

25 A. Yes, I believe that it did. I
26 believe he raised it and we mutually discussed the matter
27 and it seemed to be pretty clear in my mind, the course
28 that I felt that I should follow. I knew that the
29 report was nearly finalized and I thought that it would
30 be improper for me, knowing that an increase in compensation

Bales,

1 or in remuneration rather to the members of the Board
2 would shortly be approved by Cabinet or I anticipated
3 that, it would be improper for me to have him retire and
4 not gain the benefit of it because I understood the
5 recommendation would be made retroactive.

6 Q. There was a matter, sir, that dealt
7 with whether or not some person or persons were after
8 Mr. Cauley's position as Vice-Chairman and specifically
9 he mentioned Mr. Hamilton at some time. Mr. Deans
10 examined Mr. Eberlee again on this point, I think, asking
11 if Eberlee had ever discussed with Hamilton the possibility
12 of his being appointed, at least coming to the Board. Can
13 you help us at all as to when the Hamilton appointment
14 was made or at least first considered?

15 A. Mr. Hamilton was appointed as a
16 member of the Board, if I recall, in February of 1970.
17 I raised the matter of Mr. Hamilton's appointment directly
18 with him after I had discussed it with my colleagues and
19 so far as I am aware I can recall at no time that
20 Mr. Hamilton ever discussed Mr. Cauley's retirement or
21 anything else. I had given consideration to the appoint-
22 ment of Mr. Hamilton for some period of time, as well as
23 with a number of other names. But I took the initiative
24 in speaking to Mr. Hamilton as a member of that Board.

25 Q. Can you help us, sir, as to when
26 Mr. Cauley did come to you on the 5th of May, had you made
27 up your mind to have him resign at that time or was it --
28 did you expect him to offer his resignation? Was that
29 still an open area in your mind?

30 A. No, I did not anticipate that he was

1 going to offer his resignation nor was it going to be
2 requested then. I would have to make up my mind what
3 course of action I would follow. He had been ill
4 obviously -- I shouldn't say obviously but I had been
5 told he had been ill. I had been told that he had been
6 to visit Mr. Tom Eberlee. I wanted to see him for myself
7 and talk to him and then I would consider what course of
8 action that I should follow and advise my colleague.

9 Q. Mr. Bales, anyone with any interest
10 at all in these proceedings will be fully familiar with
11 the words, "Jack, you won't lose." Can you make any
12 comment on that for us, sir?

13 A. I have thought about that, Mr. Donnelly,
14 because as you say they have been repeated quite a bit and
15 I don't recall using those exact words. The only area that
16 I feel that I could -- they might have been used or the
17 meaning used was in reference to the retroactive salary
18 adjustment. I felt rather strongly on that, that he was
19 entitled to it and it is an obligation -- in that kind
20 of situation you must take some kind of initiative and I
21 felt that I should take the initiative in that instance.
22 Normally, if a person retired and an adjustment in salary
23 comes into effect, it is made retroactively unless at the
24 time that person is not an employee then he may not
25 receive that benefit.

26 Q. Mr. Bales, you are probably aware
27 that Mr. Cauley's position, as I understand it, is that
28 he is entitled to his salary up until his 65th birthday
29 and thereafter he is then entitled to his full holidays
30 and six months on his accumulative vacation and as it now

1 turns out, the consultancy matter. But in support of
2 that rather than to specifics this agreement was made and
3 spelled out, he comes back always to support that agree-
4 ment with the words, "You won't lose, Jack." Can you
5 help us as to whether or not the words were used by you
6 in that context or with that meaning?

7 A. I do not recall using those exact
8 words. I do recall assuring him that I would recommend
9 the salary adjustment should be made retroactive -- not
10 that it be made retroactive but if it were made retro-
11 active that it should be applied to him; this would have
12 an effect on his pension and it would also have an effect
13 on his group insurance.

14 Q. The very kernel of the matter, sir,
15 is his allegation or claim that he should be paid full
16 salary until he attained the age of 65 and thereafter
17 he'd get his holiday credits and the appropriate sick
18 leave. What do you say about that, sir?

19 A. That is not my understanding. That
20 was not the arrangement that I agreed upon.

21 Q. Was any arrangement made other than
22 what you have told us about here today?

23 A. Not to my knowledge.

24 Q. When you made this arrangement with
25 him, are you familiar with the precise extent of the
26 credits or the nature of his credits at that time?

27 A. No, I was not. I knew or at least
28 I understood that there were substantial credits of sick
29 leave and holidays built up over a period of time.
30 Mr. Cauley had told me from time to time that he would

1 always take his holidays and so on but I have been advised
2 from the Board as well that there were substantial credits
3 and holiday credits.

4 Q. It appears to be and I must see this
5 I suppose as a stranger but this man was 25 years on the
6 job and apparently rendered a good and faithful service.
7 Tell me, were you disposed in one way or the other either
8 to help him or to not help him or did you have any
9 thought about that?

10 A. I was disposed to help him and to
11 recognize his service over what I regarded as a very long
12 period of time to that Board.

13 Q. Was there any area in which you felt
14 you were helping him or doing something for him, sir?
15 You spoke of retroactive salary.

16 A. I could not give him special help
17 but I should endeavour to give him whatever was in the
18 Board's policies, the matter of the one salary adjustment
19 was not within the Board's responsibility but rather within
20 my responsibility.

21 Q. I don't think you used the word
22 "selective" but I think you touched on your statement that
23 if there had been a retirement policy before on the Board?

24 A. I understood there was an early
25 retirement policy or plan.

26 Q. The nature of which would be what?

27 A. As I understood it, the people could
28 retire from the Board at age 65. The normal retirement age
29 was 65. At 65 they would receive the full pension or
30 superannuation. At an earlier age, between 55 and 65, they

1 would receive a lesser pension, depending on their age
2 or length of service with the Board. There was also a
3 general policy and it was subject to permission to request
4 permission that those who were nearing retirement among
5 senior people could retire at an earlier age than 65 and
6 use up their sick credits and holiday credits toward
7 their normal retirement age.

8 Q. So your statement has dealt with the
9 meeting of the 5th; is that correct?

10 A. I beg your pardon?

11 Q. Your statement deals with the meeting
12 of the 5th of May?

13 A. Yes.

14 Q. Was there a second meeting on the
15 12th of May or were there any further terms at the second
16 meeting if there was one?

17 A. I don't recall that. It was
18 left to Mr. Cauley to write his own resignation and to
19 submit it to me. I did not pressure him that it was
20 to be received or delivered forthwith. I left it in the
21 normal course of events and it was dated -- as you know,
22 it is dated the 12th of May, and I presume it was sent
23 or delivered to my office and probably Mr. Cauley brought
24 it. I may well have seen him though I don't recall that
25 particular meeting. If it did take place it was brief
26 and simply a personal meeting between the two of us.

27 Q. There was another matter I think you
28 touched on in your statement as I recall it. You said
29 it was you that notified the Board, was it, sir?

30 A. That is correct.

1 Q. And there appears to be some area
2 of uncertainty about the dates. The effective order I
3 think was made May 1st and the meeting was May 5th and
4 the letter was May 8th.

5 I'm sorry, excuse me.
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1 A. In my statement I said the meeting
2 was May 5th or 6th. I'm not absolutely positive, but
3 it would be the beginning of that week. His letter of
4 resignation was May 12th. There had to be a date in
5 which it would be effective. Mr. Cauley had been away
6 and perhaps it was taken as May 1st because that is a
7 normal calculation date for salaries and so on for a
8 month basis.

9 Q. Did that occur with you, sir, or
10 elsewhere as to that date? Was that worked out by you?

11 A. I think it was worked out by the
12 Board as to the most convenient date.

13 Q. There was reference in your statement
14 about a consultancy fee and could you indicate where
15 that came from?

16 A. There is a reference as I have read
17 the order of the Board to a consultancy fee.

18 Q. There is a reference to an order
19 of the Board?

20 A. The discussion in my office did not
21 relate to that. It related to the period of time be-
22 tween then and his normal retirement at age 65 and I
23 simply asked that in that period of time if he would
24 on request be of assistance to the Board or to me
25 personally in reference to Workmen's Compensation Act
26 recognizing his long years of interest and devotion
27 to the work of the compensation matters.

28 Q. There is another matter too that
29 I would like you to comment on and that is this: There
30 is reference made to a taped conversation at Mr. Cauley's

1 home sometime probably in mid-April of 1969 and the
2 conversation allegedly between Mr. MacDonald of the
3 Board and Mr. Cauley and reference was then made to a
4 letter of resignation and the request originating with
5 the Minister which would appear to have been you at that
6 time, sir. Can you give us any help about that?

7 A. I have read the story that Mr.
8 MacDonald visited Mr. Cauley's home. I did not ask Mr.
9 MacDonald to go there nor did I ask him to attain any
10 resignation.

11 Q. Did you know Mr. MacDonald was going
12 there?

13 A. To the best of my knowledge, no, I
14 did not know.

15 Q. Now dealing again with another matter,
16 sir. There is some question about the meetings between
17 the minister and the Board as a corporate body rather
18 than simply that the individual members. Could you assist
19 us on that, the frequency of the meetings? I think it
20 was said it was in 1968 the minister did not meet with
21 the Board as a corporate body?

22 A. I became the Minister of Labour in
23 November of 1966. I met the Board together not long
24 thereafter and then I had another meeting with them
25 when I went to the Workmen's Compensation Board because
26 I wanted to see the building and become acquainted with
27 their procedures and their whole operation. I went
28 with the chairman to the rehabilitation hospital because
29 I wanted to see that. In the spring of 1967 there was
30 a fire at the rehabilitation hospital and a number of

1 | proceedings followed that and I met frequently with the
2 | Board in those subsequent months and I met with all
3 | members of the Board. But I also met not on a set time
4 | basis, but it was left to the chairman that I would call
5 | him or he would call me and he reported to me on a
6 | frequent and regular basis in reference to matters that
7 | were before the Board. I did not meet the Board every
8 | week or month, but rather whenever it was necessary. I
9 | had an arrangement as well with the members of the Board
10 | that I was free to call them as individuals to see me
11 | or they to call me asking to see me at any reasonable
12 | time. I recall particularly in September of 1967 the
13 | McGillivray report was issued and that necessitated
14 | changes and review of the Workmen's Compensation system.
15 | I met with them following that and requested them to
16 | review that report, review the recommendations insofar
17 | as it required administrative changes and to provide a
18 | study for me as to the effect of the changes that would
19 | require legislation. That was a great deal of work and
20 | they dealt with it to the Board and submitted their
21 | report to me.

22 | There was concern over the appeal system
23 | in the Board particularly by Mr. Cauley. He did not
24 | agree with it and I had some discussion on it with him
25 | about that. And I was also concerned about discontent
26 | among the Board members themselves. There were frequent-
27 | ly stories coming to me about that and I can't put the
28 | exact date to it, but I believe it was in the spring of
29 | 1968 I had a meeting with all of the Board. I had talked
30 | to them individually, but I wanted a meeting of all

1 members of the Board and it was held, as I recall, in
2 my office in Queen's Park rather than in the Labour
3 Department because the House was meeting. At that
4 meeting I made it clear to the members of the Board
5 that I regarded them all as equal members of the Board
6 recognizing the position of chairman as chairman of the
7 Board and administratively responsible if you would.
8 I told them then that if there were differences of view
9 on the Board's procedures and other matters I wanted
10 those procedures dealt with within the Board itself
11 and they should reach decisions there. But once the
12 decision was made within the Board and by them then
13 that was the decision of the whole Board. I did not
14 wish to hear statements being made outside of contrary
15 views about Board policy. I felt the Board to function
16 cohesively had to reach its decision, set its policies
17 and act accordingly. I recall further in 1968 because
18 that was the spring in which I introduced amendments
19 to the Workmen's Compensation Board Act incorporating
20 changes recommended by the McGillivray report and at
21 that time I requested the full Board and two of its
22 senior officers, Mr. MacDonald and Mr. Poole, to come
23 to cabinet when I was dealing with the changes before
24 the cabinet so that members of cabinet would have the
25 benefit of their views or they would be there to
26 answer questions if members asked it or not restrict
27 what they say. The cabinet, of course, was under the
28 chairmanship of the Premier, but they were there with
29 me and when I presented the amendments on the first
30 occasion to the cabinet all of them were present.

1 There was a full and long discussion because there were
2 a substantial number of amendments. If I recall correctly
3 we of course dealt with the legislation again subsequently
4 in cabinet before it was introduced into the House. There
5 may have been other occasions in 1968. Certainly I saw
6 them individually, but I recall that one meeting very
7 particularly because I wanted to speak directly to all
8 members of that Board and clarify their situation.

9 Q. You spoke of a caucus meeting and
10 that meeting before the legislation was introduced to
11 the House?

12 A. The cabinet meeting.

13 Q. Excuse me, sir. Do you mean by that
14 being introduced for the first time to the House? I
15 am not really familiar.

16 A. The system is that legislation is
17 presented by the minister to cabinet as a whole for
18 approval because it must become the policy -- not really
19 the suggestions of the minister, but it must become
20 policy of the government before it is introduced.

21 Q. Was it that meeting that the Board
22 was at?

23 A. That's correct, when I first present-
24 ed the amendments for discussion before the cabinet.

25 Q. There was one thing you said in your
26 statement here that perhaps you might assist the Committee
27 on and that is I think the sequence came something like
28 this: That Mr. Cauley offered his resignation and that
29 you thought it might be the best thing to do because you
30 thought the work of the Board had been impaired to some

1 extent.

2 Do you make any additional or further
3 comment on that, sir?

4 A. Mr. Cauley asked me shortly after
5 the meeting began because I had thought of it at the
6 meeting and I had a number of things I was going to ask
7 him. I particularly asked about his health, I knew he
8 hadn't been well, and I told him -- I recall I had
9 mentioned that he had been to see Tom Eberlee and it
10 was at that point that he asked me if I wanted him to
11 resign. I was a little surprised at that, but I pursued
12 the matter of his health; I wanted to see did he wish
13 to resign, was this his thought and determination. It
14 became obvious that this was his wish or at least it was
15 his willingness to resign and considering the matters
16 there and the work of the Board and the difference of
17 views within the Board his offer of resignation, I felt
18 that it was advisable and after due discussion I said
19 yes, I thought it would be best for him to resign. I
20 wanted to consider with him and I didn't answer him
21 directly.

22 Q. Mr. Eberlee rather indicated that this
23 has been a continuing -- I think he used the word
24 "intermitent" problem about the dissatisfaction Mr.
25 Cauley expressed in certain things of the Board, particu-
26 larly the appeal system. I think he described it as
27 continuing from '65 to '69. Do you have any observation
28 about that, sir?

29 A. It was a situation there were not
30 direct complaints made to me about personalities. Some-

1 times I would hear, particularly from outside places of
2 the friction at the Board. I would ask about this, but
3 Mr. Cauley and Mr. Legge certainly had different views
4 in reference to the appeal system. Mr. Justice
5 McGillivray dealt with that extensively in his report.
6 The system and the times had changed at the Board. When
7 I went there I think the Board were then dealing or
8 there were about 370,000 accident claims in a year. The
9 Board were handling assessments received of just under
10 100 million. By the time I left the ministry the number
11 of claims had -- it fluctuates according to the degree
12 of employment, but the number of amounts paid in assess-
13 ment had increased very substantially, but certainly
14 the amount received by the Board.

15 I think we have to bear in mind what was
16 of particular concern to me that there are a great
17 number of individuals throughout the whole province who
18 had claims with the Board and I wanted a system, a
19 uniform system which would enable all those who had
20 claims to process their claims in the same general way
21 and I felt -- and let me make it clear, this is the
22 situation that was in operation when I came to the
23 Board. I studied it carefully and I felt that the
24 system, bearing in mind the volume of the work involved,
25 was functioning well. I did not feel that the old
26 system or the former system functioned nearly so well
27 as I appreciated and it was my understanding that every
28 person -- under the previous system if you had an
29 adverse result from a claim or an application or an
30 appeal you were not necessarily advised of your right

1 of appeal to the higher level. Under the change in
2 procedure -- granted there was another structure to
3 follow, but those whose claims were not agree upon or
4 acceded to, always they had to be advised as to their
5 right of appeal to the next level.

6 THE CHAIRMAN: Counsel, in view of the
7 fact we are sitting for four hours this afternoon we
8 thought it would be in order to recess for 15 minutes
9 at this time. We will resume again at approximately
10 4:18.

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12 --- Upon recessing at 4:00 p.m.
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1 --- Upon resuming at 4:30 p.m.

2 THE CHAIRMAN: Come to order.

3 Counsel, would you proceed.

4 DALTON BALES, resumed:

5 CONTINUED EXAMINATION BY MR. DONNELLY:

6 Q. Mr. Bales, I have been asked to
7 inquire if you had any part of the calculation of sick
8 leave benefit or holiday benefits that were given to or
9 became Mr. Cauley's, sir? Was that done in your office
10 or elsewhere?

11 A. It was done at the Board, not done
12 by me. I had no part of that.

13 Q. Finally, sir, I have a copy of the
14 Order-in-Council dated January 8, 1970 and as far as I
15 am aware I don't think it has been entered as an Exhibit.
16 It is a certified copy. Could you identify it or take
17 a look at it, sir.

18 A. Mr. Watt showed it to me and it's
19 dated the 8th of January, 1970 and so far as I can recall
20 that is the Order-in-Council.

21 Q. And in it Mr. Cauley resigns as
22 a member and as Vice Chairman, or is that the effect of it?

23 A. If I could read it if it is of
24 assistance: "Upon the recommendation of the Honourable
25 Minister of Labour, counsel advises that
26 pursuant to the provision of the Workmen's
27 Compensation Act effective May 1st, 1969
28 resignation of John F. Cauley as a member
29 and vice-chairman of the Workmen's Com-
30 pensation Board be accepted."

1 MR. DONNELLY: Thank you, sir. I have
2 no further questions, but it may be the members of the
3 Committee have questions.

4 THE CHAIRMAN: Mr. Deans?

5 MR. DEANS: Thank you, Mr. Chairman.

6 Mr. Bales, first, why would it take so
7 long for the Order-in-Council to come through concerning
8 that they had effected both orders from Mr. Cauley and
9 Dr. Steele came at the same time? Were Orders-in-Council
10 for both Dr. Steele and Mr. Cauley processed at the
11 same time?

12 THE WITNESS: Accepting their resignations?

13 MR. DEANS: Yes.

14 THE WITNESS: Yes.

15 MR. DEANS: Why would it take so long for
16 that to occur?

17 THE WITNESS: It was until such time as we
18 were making permanent appointments.

19 MR. DEANS: Does that in some way maintain
20 the legal status of the Board?

21 THE WITNESS: I think not necessarily, but
22 I think it is a preferable procedure to deal with them --
23 they weren't dealt with at the same council meeting but
24 they were dealt with at a point close to that time.

25 MR. DEANS: Just to make it clear in my
26 mind because it was brought up previously, in actual fact
27 is the resignation then not accepted until such time as
28 it is accepted by the then Governor in Council in the
29 process? Is that the legal situation?

30 THE WITNESS: That is the final formal

1 acceptance. The members of Council were advised as to
2 what was taking place when Mr. Cauley resigned.

3 MR. DEANS: The reason I am asking is
4 because my understanding is the Board can only operate
5 when it is in fact a Board and it can't be a Board if
6 it has only one member.

7 THE WITNESS: The pro tempore members have
8 all the powers and responsibilities of a full number.

9 MR. DEANS: I understood though, sir,
10 that a pro tempore member was in fact acting in the
11 place of a member and that the member had to be in existence
12 before he could act in his place.

13 THE WITNESS: With respect, Mr. Deans,
14 let's take the situation suppose a person died and then
15 you could appoint an acting member of the Board and he
16 would have full power and responsibilities, but he
17 wouldn't be a permanent member.

18 MR. DEANS: The situation as I see it is
19 that there were occasions during the year 1969 when the
20 Board had hearings at which two pro tempore members sat.

21 THE WITNESS: It may well be, I don't know.

22 MR. DEANS: I understand that to be true;
23 I haven't gone through it as carefully as I might, but
24 I am just raising it with you. Would that be correct?
25 Would that be proper?

26 THE WITNESS: Yes.

27 MR. DEANS: Of two pro tempore members,
28 who then would be the Chairman? Surely someone must
29 chair.

30 THE WITNESS: Well, one person would be

1 designated as the acting vice chairman or the acting
2 member of the Board, and the one so designated would
3 chair the meeting. There isn't any particular significance
4 as to who chaired it.

5 MR. DEANS: I want to leave that now for
6 a moment and perhaps forever for all I know.

7 I want to turn, sir, to some questions I
8 asked you on Page 67 of April 5th.

9 THE WITNESS: I don't have that before me.

10 MR. DEANS: I will let you have that in
11 a moment, I will read it to you. The question has been
12 asked you as regards Mr. Cauley's health and you said,

13 "He had been away from time to time."

14 THE WITNESS: Could you give me the page
15 number?

16 MR. DEANS: Page 67.

17 THE WITNESS: Go ahead.

18 MR. DEANS: It is at the bottom of the page.

19 "He had been away from time to time. I
20 think you have to bear in mind that
21 hearings are set before the board - and I
22 don't have the records - but hearings are
23 set by the board to hear claims. They come
24 from various part of the province. They
25 don't sit throughout the province and when
26 they come here - and it is difficult - then
27 the board hearings cannot proceed because there
28 isn't a quorum present. Now I was advised
29 that that kind of situation had taken place.
30 I don't know how many times but a number of

1 times that spring."

2 I asked you, "By whom? Who advised you of this?

3 HON.MR. BALES: By the men - by the staff
4 and I believe also the chairman."

5 I want to ask you, sir, at the time you
6 interviewed Mr. Cauley on May 5th you obviously believed
7 he was in ill health, or you had reason to believe he was
8 in ill health and part of that reason as I recall the
9 discussion within the Legislature and within the Committee
10 was because you had been informed that he had been away
11 from his duties from time to time, and I wonder just how
12 much emphasis you placed on that particular information,
13 how much emphasis you placed on that when you requested
14 after Mr. Cauley had been absent from the Board for only
15 a couple of weeks that he come to your office so that
16 you could take a look at the state of his health. Had you
17 not had that information given to you and had he not been
18 away from time to time, would you normally have requested
19 a Board member to come into your office to see how his
20 health was?

21 THE WITNESS: It isn't the normal thing,
22 but recognizing that Mr. Cauley had had a serious heart
23 attack some three years previous; bearing in mind the
24 memorandum that I had seen from Mr. Cauley's doctor to
25 the Chief Medical Officer advising that it was recommended
26 he contact his cardiac consultant. I think it was normal
27 and the conversation between Mr. Cauley and Mr. Eberlee,
28 I think it was a perfectly normal thing to have him come
29 in.

30 Now, bear this in mind, that I asked for a

1 meeting and it was in mind that we discuss a number of
2 things and I think in my statement I mentioned that.
3 The meeting actually took a different course than I had
4 anticipated. I didn't nevertheless go back over a list
5 of matters in my mind and deal with them.

6 MR. DEANS: The letter from the doctor as
7 I recall reading said that Mr. Cauley had been in for a
8 check up and that they had noticed some higher blood
9 pressure than normal. I don't recall exactly how they
10 put it, an elevation in his blood pressure, he had sent
11 him to see a specialist who in fact had said there was
12 nothing wrong, that he needed a little rest. Now he
13 didn't say it in those words but that was the intent.
14 You could look it up if you wish.

15 Since he said that what he needs was a
16 couple of weeks or a few weeks rest far away from the
17 Board, would it not seem unusual to call him in then
18 at that point and inquire as to his state of health as
19 a doctor had indicated that a couple of weeks rest was
20 needed?

21 THE WITNESS: I had no information as to
22 the result of visits or consultation with a cardiac
23 specialist.

24 MR. DEANS: You had none?

25 THE WITNESS: No. I was just told he was
26 going to go there and that's what the memorandum says.

27 MR. DEANS: That is the memorandum to me?

28 THE WITNESS: Not the memorandum to you,
29 no, the memorandum to Mr. Cauley.

30 MR. DEANS: There was a memo which said

1 that in fact he having been to the specialist, the
2 specialist found that there was no problem with him.

3 THE WITNESS: That memorandum I have not
4 seen.

5 MR. DEANS: I am sure, sir, if it's here
6 you could have a copy of it.

7 Now when you were informed of his -- that
8 he had been away from the Board for quite a time, who
9 actually told you this?

10 THE WITNESS: I would have to -- as far
11 as I would recall it would be as a result of inquiry,
12 at least normal inquiry of mine, not as to what their
13 attendance records were. It would be indicated to me
14 perhaps by Mr. MacDonald or perhaps Mr. Johnston. Mr.
15 Cauley as I appreciated had a very good attendance record
16 at the hearings before the Board. I think Mr. Cauley
17 usually came to those hearings. Frequently he might be
18 away from in between the hearings and not be there. I
19 remember some little concern being expressed to me by
20 Mr. Johnston as to whether Mr. Cauley would arrive for
21 the hearing and that sometimes they had to be not very
22 sure the hearings were going to proceed if there were
23 not a quorum. Now that would apply to other people as
24 well as -- to all members of the Board.

25 MR. DEANS: You are talking about Mr.
26 S. R. Johnston?

27 THE WITNESS: Yes.

28 MR. DEANS: It is interesting that Mr.
29 Johnston has such a good record of attendance at the
30 Board. Mr. Johnston's record was by far the best according

1 to the papers that I have here.

2 THE WITNESS: I haven't seen them.

3 MR. DEANS: I am interested -- that by
4 the way is simply in that period from January 1st to
5 April 30th, 1969. But I am interested to know whether
6 when you were asked or told by Mr. Johnston of Mr.
7 Cauley not being at the Board and therefore hearings
8 being held up, did it ever occur to you to ask why they
9 didn't simply proceed with Mr. Lane and Mr. Johnston?

10 THE WITNESS: They did periodically and
11 I am sure they proceeded with Mr. Cauley and Mr. Johnston.
12 Sometimes with Mr. Legge and Mr. Johnston.

13 MR. DEANS: Are you aware that during the
14 month that we are talking about, the month immediately
15 preceding Mr. Cauley's leaving the Board, the month of
16 January, February, March and April, that up to April 3rd
17 that Mr. Legge had only been at hearings on four days?

18 THE WITNESS: No, Mr. Deans. There was
19 reference by Mr. Cauley when he testified on April 5th.
20 I think he particularly referred to his attendance at
21 meetings in 1968. I recall I think in the record he
22 said something that he had the record for 1969. I
23 haven't had those figures.

24 MR. DEANS: I think I would like to bring
25 you up to date, sir, because with all due regard it is
26 somewhere along the way someone is telling you things
27 or was telling you things that are not reflected in the
28 records of the Board. Now it may well be that what they
29 were telling you they believe to be true, and looking at
30 the records of the Board, and that is what I am quoting

1 from, they are certainly not evidenced by the record
2 provided to us. Now let me read to you:

3 "During the month of January there were
4 24 hearings held. Of those Mr. Johnston
5 attended all 24; Mr. Cauley attended 18
6 and Mr. Legge attended six, and of those
7 six were held on two days." "

8 That was two days out of the total month, and Mr. Legge
9 attended hearings and while the others attended with
10 Mr. Cauley six days, and Mr. Johnston on eight days.

11 "During the month of February there were
12 20 hearings held and Mr. Legge attended on
13 one day for one hearing, one day. Mr.
14 Cauley attended all but one day. Mr.
15 Johnston attended every day."

16 "During the month of March there were 13
17 hearings before the Board. Mr. Legge
18 attended one day for two hearings, Mr.
19 Cauley attended all but one day and all
20 but two hearings, Mr. Johnston attended
21 every hearing."

22 "During the month of April up until April
23 8th ..."

24 because that seems to be the date around Mr. Cauley
25 ceased to operate with the Board, but up until April 8th
26 there had been ten hearings held, six of which Mr. Cauley
27 attended, all of which were attended by Mr. Johnston,
28 four of which were attended by Mr. Legge, but Mr. Legge
29 attended again up until that time only one day and that
30 during the entire month in spite of the fact Mr. Cauley

1 was not at the Board, was away from the Board from I
2 think the 8th on, and Mr. Legge attended only three days
3 and Mr. Johnston and Mr. Cross conducted the majority
4 of the remainder of the hearings and the total number of
5 hearings heard by Mr. Legge were eight.

6 Now does that, in looking at that would you
7 say that that was evidence of Mr. Cauley's not attending
8 to his duties at the hearings of the Board?

9 THE WITNESS: I think you must ask those
10 questions of the members of the Board. But I think you
11 must also bear in mind that there were certain meetings
12 of the Board and the Chairman had the responsibility of
13 dealing with the administration of the Board.

1 MR. DEANS: Sir, I asked that and I intend
2 to ask the members of the Board and other members of the
3 Board, those that are the present members about the
4 present situation and those that were previous members.
5 I asked what the Chairman does administratively that is
6 not required of the Vice-Chairman for the other members
7 and I ask you, what is it that the Chairman does that
8 is not required of the other members in terms of adminis-
9 trative work, recognizing that there are executive officers
10 of the Board to carry out the day to day functions of the
11 Board.

12 THE WITNESS: Well, that is up to the
13 Chairman and the members to divide the work, to work out
14 their own work habits and arrangements. It is like being
15 a minister or deputy, you have to deal with the matters
16 of the Department and go over it in the proper way. I
17 discussed the matter of the attendance at Board hearings
18 with the Chairman and with others from time to time. The
19 Chairman particularly attended -- advised me that he
20 particularly attended hearings that involved -- I think
21 it is either section 15 or 16 of the Act -- I can't be
22 sure of the exact number now but those are questions
23 rather difficult and somewhat legally related questions
24 determining whether a person was in the course of his
25 employment perhaps when an accident occurred and the
26 Chairman told me from time to time that he did make it
27 a point always to be present for those type of hearings
28 in particular. That comes back to my mind quite clearly
29 that are matters of some complexity.

30 MR. DEANS: Let me ask you, don't you

1 believe that a workman, having gone through this appeal
2 procedure and finally appealing to the Board has the
3 right to expect the Chairman of the Board will hear his
4 appeal?

5 THE WITNESS: Well I certainly think it is
6 advisable for as large a number of the Board to be present
7 to hear the appeal as possible.

8 MR. DEANS: Certainly that is the minimum
9 number that would be present would be two so as large a
10 number would be three?

11 THE WITNESS: That's right.

12 MR. DEANS: And the one person makes the
13 balance.

14 Now I want to ask you, during the years,
15 if this were an unusual occurrence I would say that might
16 not have happened over that short period of time, but
17 during the years 1968 to the completion -- to the end of
18 April 1969 -- I am now going again from the Board record
19 that is an Exhibit here, there were 727 hearings. Of
20 those 727, Mr. Legge attended only 260 some. Do you
21 consider that to be adequate for the Chairman of the
22 Board?

23 THE WITNESS: Well, I expect the Chairman
24 of the Board and all members to attend as many hearings
25 as possible, particularly when they are required for
26 the proper determination of the claims in this matter.

27 MR. DEANS: Do you think when you compare
28 the 260 attended by Mr. Legge and the 560 attended by
29 Mr. Cauley in the same period that in fact Mr. Legge,
30 may I say that Mr. Legge wasn't pulling his weight as far

1 as the hearings of the Board were concerned?

2 THE WITNESS: But we have to bear in mind
3 the total work of the Board and that's up to Mr. Legge to
4 answer that. But as Chairman he certainly had responsibility
5 as Chairman in addition to being a hearing member of the
6 Board.

7 MR. DEANS: But his primary responsibility,
8 sir, as a member of the Board, whether the Chairman or
9 otherwise, was to administer the Act in terms of guaranteeing
10 the workmen equity?

11 THE WITNESS: That is right.

12 MR. DEANS: And that could only be done by
13 taking part -- not could only be done but a major portion
14 of that could be done by taking part in ensuring that the
15 workmen received a fair hearing and that that could be
16 done by being present at as many as possible and I ask you,
17 do you think an attendance of 267 of the 427 is an adequate
18 attendance over two and a half years?

19 THE WITNESS: I think I answered that
20 question.

21 MR. DEANS: I say in view of this, and
22 assuming it is correct and it is a Board record, assuming
23 this is correct, do you believe that perhaps Mr. Cauley
24 had justification for being annoyed, that he was in fact
25 being required to chair so many meetings of the Board and
26 in the Chairman's absence and that perhaps he didn't
27 attend the administrative meetings because he was
28 already busy doing the other work and if the Chairman had
29 done half of the work that he was supposed to do, he
30 could then have had the time to attend some of the other

1 meetings?

2 THE WITNESS: Here again, I think you must
3 ask the Chairman and other Board members but I don't think
4 that hearing meetings were held at the same time as Board
5 meetings.

6 MR. DEANS: No, but the thing I am saying
7 to you is this: if a person is going to be there for
8 hearings and then to be expected to be there in addition
9 for other administrative meetings, it certainly is easier
10 on the person who doesn't have to do the hearings to be
11 at the other meetings than it is for the other person to
12 be at all the meetings; would you agree?

13 THE WITNESS: Yes, it presents a time
14 problem.

15 MR. DEANS: It presents not only a time
16 problem but it's a workload problem because I know just
17 from the work that I do that there is a great deal of
18 preparation required in order to conduct hearings, even
19 from this work, and I would assume that it is easier than
20 if the preparation isn't there and the time is required
21 to be important.

22 Let me ask you another matter in relation
23 to this. There was a press release of late in which it
24 stated that tape recorded conversations were conducted
25 by the Board. I was shocked and I ask you, do you believe
26 that it is proper that the Board should tape record
27 messages from persons outside of the Board without the
28 knowledge of the person who is calling?

29 THE WITNESS: Mr. Deans, I made a statement
30 on that at the time, not in the House because I wasn't

1 asked the question but I made the statement then that I
2 had never taped meetings in my own office nor did I concur
3 or agree to that practise without the machine being
4 obviously visible and I didn't believe in recording
5 conversations of that nature. At the time that story
6 was published because of my concern in it I called the
7 Chairman of the Board and I could not reach him at that
8 particular time that morning. He wasn't away but he was
9 in a different place. I reached Mr. MacDonald and I asked
10 him this question and Mr. MacDonald assured me that while
11 transcripts of meetings or taping of meetings had been
12 done from time to time, the machine was always clearly
13 visible but they did not record conversations and so on
14 without the knowledge of the individual. I do not approve
15 of secretly recording peoples' conversations without their
16 knowledge.

17 MR. DEANS: I will return to that in a
18 moment, sir, but I want to ask you, there was a statement
19 in the Globe and Mail on Friday, April 7th, and they quoted
20 Mr. Decker as saying, and let me just get what I wanted
21 to say. "Mr. Black and Mr. Decker have been at odds
22 since Mr. Decker's appointment to the Board
23 in March of 1970. It became common knowledge
24 among Board executives within weeks of
25 his arrival. Mr. Decker, about 50, came to
26 the Workmen's Compensation Board after
27 serving 12 years with the Canada Pension
28 Commission."

29 and goes on to say:

30 "He settled to introduce himself to the

1 executive. He wanted to know them and
2 wanted them to know him. It was shortly
3 after the interviews started that
4 executives were ordered to submit detailed
5 and confidential memorandums of their
6 meetings. Mr. Decker, similar to the
7 distrust and outright hatred that he
8 existed in some quarters in June just
9 four months after his appointment,
10 Mr. Decker decided to see the Minister
11 of Labour, Mr. Dalton Bales, to tell him
12 something had to be done and that the
13 action should be initiated in his office."

14 I will go on in a moment but I want to ask you, what did
15 you do as a result of Mr. Decker -- well, did Mr. Decker
16 come to you?

17 THE WITNESS: Let us go back for a second,
18 prior to Mr. Decker's appointment when I advised I saw
19 him several times before his appointment and then I saw
20 him and I had a meeting with him as I recall where I told
21 him his appointment had been made. In that time, I
22 believe I said the same to Mr. Hamilton, similar words,
23 that I expected them to bring their own independent
24 knowledge, sense, judgement to the work of the Board.
25 I regarded them as a full and equal member of that Board,
26 they were all members of the Board, the Chairman was
27 Chairman but that did not mean he was the only person
28 who would lead, and I expected them to function in that
29 way. They were not going there to follow anybody else's
30 direction and I was not dictating to them. I did charge

1 them with the responsibility for using their own sound
2 judgement in the proper administration of the Board in
3 the end.

4 Now then, following that, the appointment
5 I think from Mr. Decker was made in February of 1970. He
6 required some time to close out his responsibilities in
7 the Ottawa position and I believe he came to the Board
8 to work at about the first of April or thereabouts. I
9 told him that there would be much for him to learn, it
10 was a new field entirely. I thought he should get around
11 and acquire as broad a knowledge as possible. I told him
12 it would be difficult I understood for him initially in
13 conducting hearings because it would be a new set of
14 criteria to deal with but to proceed and to keep in touch
15 with me on it. I left him for a period of time to read
16 it. I think it may have been at his request or my request.
17 Certainly I met him at that time at the June meeting.
18 There was some reference there, I think in that story
19 that the Board members were not allowed or permitted to
20 come to me but I made it clear -- I never made any such
21 arrangement at all, and if you read the Globe and Mail
22 on the next day I think you will see a statement in there
23 that denies such arrangement.

24 MR. DEANS: Although you may not have made
25 it, it seems that this information was relayed to
26 Mr. Decker, whether you directly told him or whether
27 someone else told him, Mr. Decker believes, according
28 to this statement, that he was not permitted to approach
29 you directly; that the only persons, and it says in the
30 statement, "The only Workmen's Compensation Board Officials

1 that can carry on direct communication with the Minister
2 was Mr. Legge himself or Mr. MacDonald, the Executive
3 Manager of the Board." And it strikes me as odd because
4 that to some extent is similar to the things that
5 Jack Cauley said, that he too indicated that there had
6 been -- there was always a problem with direct communi-
7 cation with the Minister.

1 THE WITNESS: Mr. Deans, I try to be pretty
2 approachable with people in the government. I don't
3 think people have too much difficulty talking to me if
4 they want to and I treated the members of the Board
5 and senior staff in the same way.

6 MR. DEANS: So Mr. Decker is wrong?

7 THE WITNESS: In my view that statement
8 is not correct. I don't know whether he actually made
9 that statement or not. You would have to ask him.

10 MR. DEANS: I intend to, sir.

11 The whole matter then if I can return to
12 Mr. Cauley for a moment, without trying to decide whether
13 or not Mr. Cauley wasn't sick or otherwise the evidence
14 we have to this point both in terms of his attendance
15 at the Board and his statements of his positions seem
16 to indicate that if he was sick it was marginally sick;
17 that there certainly was no indication for any need for
18 confinement; there was no indication we could see at this
19 point, perhaps you have something; that his attendance
20 at the Board up until the day, the last day he was there,
21 had been consistent with previous years, better than
22 Mr. Legge's by a long stretch and it didn't indicate to
23 me and I don't think any other member of this Committee
24 that he had been off periodically or he had failed to
25 meet his obligations.

26 How then do you make the decision that Mr.
27 Cauley had in fact been away and therefore you need to
28 discuss with him the state of his health with those
29 things in mind?

30 THE WITNESS: Mr. Cauley had certainly been

1 faithful to the Board as far as I was concerned, but I
2 think we must all bear in mind that when a person has
3 a serious heart attack, and the work of the Board can be
4 strainful from time to time, you must bear in mind that
5 physically that work takes its toll on people and when I
6 have word, word which I do not doubt, that Mr. Cauley
7 quite properly was consulting his family physician in
8 his normal way as people should, but more than that was
9 being referred to a cardiac consultant, who had a heart
10 attack recently and I would think it normal and proper
11 that I should enquire of him and see as to how he was
12 and whether he could carry on with the work of the Board.

13 MR. DEANS: Might I ask you, sir, looking
14 back would it not have made sense to wait for the results
15 of a specialist's investigation before calling Mr.
16 Cauley in, and secondly, if you are interested in his
17 welfare couldn't have you given him a call on the tele-
18 phone and said, "How are you doing, Jack?"

19 THE WITNESS: Mr. Cauley did not come from
20 Hamilton especially to see me. As I understood it he
21 was going to be in his office and he came at a mutually
22 convenient time.

23 MR. DEANS: He was going to be in his office?

24 THE WITNESS: I presume so. In any event,
25 I didn't set a time to tell Mr. Cauley he was to be there
26 at this time. In my usual practice I asked my secretary
27 to advise of a convenient time and work it out.

28 MR. DEANS: Did you still believe Mr.
29 Cauley was absent from time to time from the Board?

30 THE WITNESS: Mr. Cauley I think was absent

1 from time to time. He was there for hearings, but I
2 think between times he may well have been away.

3 MR. DEANS: You have some evidence to
4 substantiate that?

5 THE WITNESS: I don't say I have evidence,
6 I have an understanding.

7 MR. DEANS: Who told you that, sir?

8 THE WITNESS: Let me make it clear that I
9 won't say that Mr. Cauley was not carrying out his
10 duties or the duties placed upon him.

11 MR. DEANS: Then he was doing his job?

12 THE WITNESS: As far as I am concerned, yes.

13 MR. DEANS: Then why would it bother you
14 then ---

15 THE WITNESS: As agreed upon between the
16 members ---

17 MR. DEANS: Why would it bother you if he
18 was doing his job that someone says he wasn't there?
19 If you believed he was doing his job and someone came
20 to you and said, "He is not around the Board as much
21 as he should be," why would that bother you, why if you
22 could turn around and say, "Well, my information tells
23 me he is doing his job."

24 THE WITNESS: He was on an important
25 body, there was a very large volume there and it has
26 been referred to earlier a number of times that I think
27 there may have been a feeling of disagreement between
28 the members of the Board. It wasn't often expressed
29 openly as disagreements to me, but I was aware that
30 there was disagreement.

1 MR. DEANS: Do you think that Mr. Cauley's
2 physical condition, medical condition in the months of
3 January, February and March of 1969 might have been
4 better had he not had to do quite as many cases before
5 the Board?

6 THE WITNESS: I don't think that had any-
7 thing to do with it. I think that Mr. Cauley and I
8 sensed in the times that I saw him then and in '68 too
9 that I noticed certain tension in him.

10 MR. DEANS: Do you think that might be
11 attributable to overwork?

12 THE WITNESS: Well it might have been, but
13 obviously whatever caused it was there.

14 MR. DEANS: So that the suggested sabbatical
15 that his doctor told him he ought to have might have
16 resulted?

17 THE WITNESS: It might have.

18 MR. DEANS: Let me ask you about the order
19 of the Board here.

20 Were you familiar with the conditions of
21 Mr. Cauley's retirement arrangements if you can call them
22 that? Were you familiar with the retirement arrangements
23 of Mr. Cauley prior to the passing of the order of the
24 Board on the 8th of May?

25 THE WITNESS: As I stated earlier, follow-
26 ing my meeting with Mr. Cauley I communicated my under-
27 standing of it to the chairman and I believe the executive
28 manager, Mr. MacDonald.

29 MR. DEANS: Is your understanding that it
30 contained in the confidential order of the Board of May

1 1969? Is what they have on the order what you understood
2 to be the condition?

3 THE WITNESS: Excepting reference to -- I
4 made no arrangement about a retainer.

5 MR. DEANS: The consultancy fee. Were
6 you surprised that the Board would put in after retire-
7 ment a consultancy fee to be established?

8 THE WITNESS: Well that could really have
9 to be by mutual arrangement. I don't recall discussing
10 that matter with them and I don't think I really saw
11 that Board order for some months afterwards. It certainly
12 was not submitted to me before the Board dealt with it.

13 MR. DEANS: Were you surprised when you
14 saw the consultancy fee had been written into the Board
15 order?

16 THE WITNESS: Yes, I didn't anticipate that.
17 I had clear recollection that I had spoken to Mr. Cauley
18 during the period when he was still receiving the equiva-
19 lent of salary, using up sick credits and holiday credits.
20 He would in that period give his advice and counsel to
21 the Board and to me as Minister if I requested it on
22 various matters bearing in mind his knowledge and under-
23 standing of the Board.

24 MR. DEANS: Do you believe he is entitled
25 to a consultancy fee now?

26 THE WITNESS: There was no agreement
27 reached as to a consultancy fee and in my view, no.

28 MR. DEANS: Well, let me ask you at this
29 point, as you say no agreement was reached and since
30 Mr. Cauley hadn't seen the order of the Board until, I

1 believe, yesterday, it would be extremely difficult for
2 him to come to an agreement in 1971 over something he
3 knew nothing about?

4 THE WITNESS: It is not agreement from one
5 person, it has to be on both sides.

6 MR. DEANS: Exactly. If only one person
7 knows that such an opportunity is available then the
8 other can hardly initiate discussion. And I am asking
9 you now, considering that Mr. Cauley was never notified
10 of the opportunity in 1971 of negotiating a consultancy
11 fee for that year, do you now believe that he is entitled
12 to negotiate?

13 THE WITNESS: No, I think it must originate
14 with the Board as to whether they want to retain someone
15 as a consultant.

16 MR. DEANS: Well, it says very clearly and
17 there seems to be no equivocation in the final sentence:

18 "After retirement in 1971 a consult-
19 ancy fee will be established for one
20 year."

21 It doesn't say it may be or might be or perhaps it will
22 be, it says it will be. It was not. The order of the
23 Board was not adhered to and it can hardly be the fault
24 of the person who was supposed to get it, he wasn't
25 informed that it was available. Now surely there is an
26 obligation on the part of the Board to have made it known
27 to Mr. Cauley the conditions under which the order had
28 been drafted?

29 THE WITNESS: Mr. Deans, as you raise that
30 matter, as you read it it says a consultancy fee, it

17/7 1 doesn't say what the consultancy fee will be or what
2 would be involved. In my view it would require an agree-
3 ment by both parties before that agreement could be
4 final.

5 MR. DEANS: That is interesting because
6 would you then agree that the other factors would require
7 an agreement by both parties?

8 THE WITNESS: I believe those other
9 matters had been finalized with some precision.

10 MR. DEANS: Was there an agreement?

11 THE WITNESS: With reference to what?

12 MR. DEANS: Was there an agreement on the
13 other matters?

14 THE WITNESS: In my view there was. I
15 haven't a copy of the Board's order before me.

16 MR. DEANS: Could we provide a copy of
17 the Board's order for the Minister?

18 THE WITNESS: It has been handed to me by
19 Mr. Gaunt.

20 MR. DEANS: Surely if we are going to single
21 out one sentence in the order and say that that must be
22 agreed upon, but the remainder can be put into force
23 without agreement, and there was no formal agreement of
24 any kind throughout the entire transaction, but that
25 part there is as valid as all of the other parts.

26 THE WITNESS: Well, in my view the first
27 -- as I glance at this and read it -- the first two
28 paragraphs, at least the operative paragraphs are the
29 ones being dealt with. The second paragraph, I suggest
30 you need not have been there because that depends not

1 on the Board, but rather on a government or cabinet
2 decision which the Board must carry out.

3 MR. DEANS: Well, then am I to understand
4 that had the cabinet decided ---

5 THE WITNESS: This is in reference to the
6 retroactive pay.

7 MR. DEANS: Am I then to understand the
8 cabinet then decided not to put the retroactive pay to
9 Mr. Cauley, that this order of the Board would have been
10 nul and void?

11 THE WITNESS: That portion of it would be.

12 MR. DEANS: And therefore the entire agreement
13 would be nul and void since in fact as you say it must
14 be agreed to?

15 THE WITNESS: You would have to have that
16 legally determined and I'm not doing that at this moment,
17 but in my view the retroactive part required some action
18 -- the retroactive payment required some action by cabinet.
19 The other matters required only action by the Board itself.

20 MR. DEANS: But it required action?

21 THE WITNESS: By the Board.

22 MR. DEANS: Since in fact the order of the
23 Board says and I come back to it that after retirement in
24 1971 a consultancy fee will be established.

25 It doesn't say it will be negotiated, it
26 says, "will be established," and since it was not then
27 surely the responsibility rests with the Board to
28 establish such a consultancy fee?

29 MR. DEANS: I think it is within their
30 purview to be -- it is still within their purview to

7/9
1 decide if they require a consultant and what it shall be
2 about and on what basis.

3 MR. DEANS: I refer you to an order of
4 the Board dealing with the resignation of Dr. Steele.
5 It seems from what I can see that it is a practice of
6 the Board in dealing with members when they leave, at
7 least a practice on these two occasions and I don't know
8 about others, we will check them out, to establish a
9 consultant service fee. Because in the case of Dr.
10 Steele it says, "The Board further directs,..."
11 and this is in acceptance of his resignation, "The Board
12 further directs that Dr. E.C. Steele
13 be paid an honourarium of \$9,500
14 for consulting services in the area
15 of professional relationships for
16 the period of one year after retire-
17 ment."

18 That it seems to be a practice of the Board to pay these.
19 Now, I ask you, I mean surely if the Board issues an
20 order then that order is -- unless a subsequent order is
21 provided nullifying the subsequent order.

22 THE WITNESS: I don't have a copy of the
23 order you are referring to before me and I was not
24 involved in the retirement arrangements for Dr. Steele.
25 It is my recollection that he was doing some work, and
26 I don't know the nature of it or what was done for the
27 Board. The Board members would have to advise you of
28 that, I have no knowledge of it.

29 MR. DEANS: You believe he was doing work
30 for the Board?

7/10

1 THE WITNESS: I have some recollection he
2 was, but I don't know of what nature.

3 MR. DEANS: We can check it with the
4 Board.

5 You stated that the work of the Board was
6 being impaired by disagreement within the Board?

7 THE WITNESS: I said I was concerned.

8 MR. DEANS: You believed perhaps it might be.

9 This concern brought you to call the Board
10 together and to advise them that they should settle their
11 differences?

12 THE WITNESS: Oh, yes.

13 MR. DEANS: Is this correct?

14 THE WITNESS: Yes, I referred to that in
15 earlier statements this afternoon.

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1 MR. DEANS: After that did the Board in
2 total or any two members of the Board, or the Board in
3 total approach you in regards to disharmony that existed
4 in the Board?

5 THE WITNESS: I was under the impression --
6 I hope it wasn't a false impression -- but that my
7 meeting with him had some beneficial effect at least for
8 a period of time. I inquired from time to time how the
9 situation and how they were working matters out; I also
10 inquired of senior staff as to whether the Board was
11 functioning well, but I became aware subsequently, some
12 months subsequently and it was I think probably by
13 indirect information rather than direct, that there were
14 differences of views again, not serious, but there were
15 differences of views.

16 MR. DEANS: Did you require or cause to
17 have inquiries into the differences that were becoming
18 evident?

19 THE WITNESS: Yes, I recall raising it
20 with the Chairman in one of his fairly brief meetings
21 with me.

22 MR. DEANS: Did you ever think to raise it
23 with the Board?

24 THE WITNESS: I believe I discussed the
25 matter -- I can recall discussing the matter particularly
26 with Mr. Johnston and I believe I discussed it with Mr.
27 Cauley, although Mr. Cauley rarely made adverse comments
28 to me about his colleagues on the Board.

29 MR. DEANS: He has made a few since.

30 THE WITNESS: May I make it clear that Mr.

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1 Johnston and nor did others either, they didn't deal in
2 personalities.

3 MR. DEANS: May I ask you, were the
4 differences that were brought to you by the Board and
5 the differences that were apparent or apparently involved
6 in the Board, were they substantially different from the
7 problems that Mr. Decker brought to your attention?

8 THE WITNESS: The main source I felt of
9 difference with the previous Board, and by that I mean
10 Mr. Legge, Cauley, Johnston -- Mr. Johnston of course
11 was only an active member, but again there was still this
12 concern over the appeal system and the way it was
13 functioning. Mr. Cauley had and I think has them today
14 strong views as to that system, and I must say that his
15 conversations with me related to what was the former
16 system and his view of the benefits of that former
17 system. At that time under the former system he had a
18 much more I think direct and active role to play in the
19 handling of individual claims than he had subsequently.

20 MR. DEANS: Did Mr. Decker tell you when
21 he visited with you on the occasion that he did, on
22 whatever date it was, I believe it was June, that he
23 believed Mr. Legge's attitude was the root cause of the
24 Board?

25 THE WITNESS: I don't recall that statement.

26 MR. DEANS: Do you recall any similar
27 statement?

28 THE WITNESS: Certainly he expressed some
29 concern -- I asked him how he was getting along with the
30 Board in his work and I think he had found the transition

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1 from his previous position to the new one to a degree
2 frustrating because there was much to learn. He had gone
3 immediately into presiding -- not presiding but attending
4 at hearings and it is not the easiest situation in the
5 world and it took him time to accustom himself to that
6 and time to accustom himself to the whole situation.

7 MR. DEANS: May I come into the retroactive
8 pay again for a moment. Does the Lieutenant Governor in
9 Council have the right to pass an order that will require
10 payment of the funds of the Board?

11 THE WITNESS: Under the provisions of the
12 Act.

13 MR. DEANS: Under the provisions of the
14 Act a retroactive payment to a member of the Board no
15 longer with the Board?

16 THE WITNESS: Yes, it's my opinion and if
17 I advised the Cabinet, this is what my proposal would be
18 and it was understood by my colleagues that Mr. Cauley
19 receive that retroactive pay, one retroactive. There
20 was a question made and I heard a statement when I came
21 in just prior to my speaking of two retroactive payments.

22 MR. DEANS: There was only one. That was
23 in error.

24 Your former Deputy Minister didn't recall
25 you saying that perhaps it would be as well for Mr. Cauley
26 to resign. I seem to think in listening to you that you
27 did say something to that effect?

28 THE WITNESS: In my recollection I did.

29 MR. DEANS: You did say that it may seem
30 to be the best approach?

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1 THE WITNESS: After due consideration he
2 had raised this matter. We continued discussion about him
3 and so on, yes, I recall -- I can't recall the exact
4 words, but words to that effect, yes.

5 MR. DEANS: You don't think it possible that
6 at the conclusion of a meeting with Mr. Cauley at which
7 Mr. Eberlee was present that you said to him on leaving,
8 "Don't worry, Jack, you won't lose."

9 THE WITNESS: I think I dealt with that
10 matter earlier.

11 MR. DEANS: Even in an offhand way?

12 THE WITNESS: I don't recall that.

13 MR. DEANS: I come to the final point so
14 often, but this is the final point: when do you intend
15 to call in Mr. Hamilton to inquire as to the state of
16 his health? I say that facetiously.

17 THE WITNESS: I am no longer in the
18 Department where I report to the Legislature for the Board,
19 but I did have discussions with Mr. Hamilton about his
20 health after he was there from time to time because he ---

21 MR. DEANS: Would it be fair to warn him
22 not to take a couple of weeks off?

23 THE CHAIRMAN: Mr. Miller?

24 MR. MILLER: I think I will waive my
25 prerogative of equal time in the question period through
26 these onerous and sometimes prolific questions.

27 I would like simply to challenge or look
28 at the link between the Workmen's Compensation Board
29 and the Minister because I think this has some bearing
30 on our future relationship. Do you feel for example that

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1 it would be wise for the Minister to have more frequent
2 formal meetings with the Board?

3 THE WITNESS: I think that depends on the
4 arrangements the individual Minister might make. You
5 must have communication, you must be kept advised as to
6 how the Board is functioning etc., but I think one has to
7 bear in mind that under the provisions of the Act, the
8 only place that the Minister of Labour is mentioned in
9 this Bill is under Section 79, which says that the Board
10 shall, after the close of each year, file with the Minister
11 of Labour an annual report on the affairs of the Board.
12 The Minister of Labour shall submit the report to the
13 Lieutenant Governor in Council and then shall later report
14 before the Assembly if it is in session, and if not the
15 next assumed session. Under the provisions of the Act
16 the Minister of Labour is given no direct authority over
17 the Board and he does not have responsibility for the day
18 to day administration of that Board. He has no statutory
19 authority.

20 MR. MILLER: I understand he had the right
21 to recommend the nomination of members of the Board as
22 they were required.

23 THE WITNESS: It has become a practice over
24 the years that since the Minister of Labour reports to the
25 Legislature for the Board, he also reports to the Cabinet
26 for the Board and deals with all matters relating to the
27 Board.

28 MR. MILLER: This at times then would
29 involve you making an evaluation of the capabilities of
30 the men on the Board itself, and it is in that light that

18/6 1 I was wondering if a more formal relationship would be
2 better regardless of the present Act?

3 THE WITNESS: Well again I say it depends
4 upon the Minister and how he will function and how the
5 Board functions. I think it is the obligation of the
6 Minister to keep himself well informed on the matters of
7 the Board.

8 MR. MILLER: There has been a lot of
9 questioning of you and other people about Mr. Legge's
10 absence for example and whether this implied that he
11 wasn't doing his job, and I was curious to know whether
12 this couldn't be properly evaluated from the rather
13 tenuous relationship that now exists between the Minister
14 and the Board.

15 THE WITNESS: Let me make it clear, I
16 didn't say Mr. Legge was not doing his job. It is my
17 view Mr. Legge -- granted we cited certain statistics
18 about certain attendances at Board meetings. Mr. Legge
19 in my standpoint seemed to be in attendance, seemed to
20 be working regularly with the Board and I hold on one
21 occasion that that must be his prime responsibility
22 because it was a very important post.

23 MR. MILLER: That is all I have, thank you.

24 MR. STOKES: I would like to ask Mr. Bales
25 if he feels that an honourarium or a payment of \$9500.00
26 such as was paid to Dr. Steele was excessive in the light
27 of the duties that he performed on behalf of the Board?

28 THE WITNESS: I would have to answer that
29 after knowing what duties he did perform. I would have to
30 say I did not know.

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1 MR. STOKES: Well according to the reports
2 he resigned on early retirement on August 31st of 1968,
3 this is the Board's records, and he was absent from
4 Ontario from January 8th of 1968 and according to the
5 Board's report here it would indicate that if he received
6 an honourarium of \$9500.00 when he wasn't even in
7 Ontario. Now what possible honourarium capacity could
8 he have served if he wasn't even in Ontario in that
9 period of time?

10 THE WITNESS: Mr. Chairman, may I attempt
11 to clarify that for you? Dr. Steele had come to me I
12 think prior to his leaving the Province in December I
13 would think of 1967 and told me that he was going on
14 holiday, on an extended trip and I believe he was
15 visiting at some distance -- I think it was Thailand
16 but I am not sure of that, because his son was stationed
17 there. That was purely holiday and he was using up
18 holiday time to do so. He had not been well. On his
19 return he continued as I appreciate and understand, he
20 used holiday credits and sick credits and was paid the
21 equivalent of salary until August of 1968. If he did
22 consultant's work it was done subsequent to that period.
23 It was not done supposedly while he was away.

24 MR. STOKES: So you are saying then that
25 he consumed his sick leave and holiday credits up to
26 August 31st, 1968 when he -- or subsequent to that time
27 in 1968 when he resigned on early retirement. For what
28 period of time would he have been paid the honourarium
29 of \$9500.00?

30 THE WITNESS: I don't know. You will have

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1 to ask the Board; I am not aware of that.

2 MR. STOKES: All right. Mr. Cauley, he
3 resigned on the May 1st, 19 ---

4 THE WITNESS: May I go back to the other
5 matter. It is my understanding Dr. Steele, the same
6 arrangement applied, same policy or arrangement applied
7 with him with reference to sick credits and holiday
8 credits as applied to Mr. Cauley.

9 MR. STOKES: Except Dr. Steel was paid the
10 honourarium and Mr. Cauley wasn't.

11 THE WITNESS: Well, I said in reference to
12 sick credits and holiday pay.

13 MR. STOKES: Are you saying Dr. Steel was
14 not paid sick and holiday credits but was given an
15 honourarium in lieu of ---

16 THE WITNESS: I am saying the contrary,
17 in my understanding he received the equivalent of salary
18 to sick credits and holiday credits up to the time that
19 they were used up, which I believe was the end of
20 August of 1968.

21 MR. STOKES: And then was paid an honourarium
22 of \$9500.00 in excess of that amount while he wasn't even
23 in the Province?

24 THE WITNESS: I don't know where he was
25 after August of 1968. It is my understanding he was in
26 the Province, but I don't know that.

27 MR. STOKES: Well this is a period of office
28 for the Workmen's Compensation Board for 1967 which
29 indicates that Dr. Steele was absent from Ontario from
30 January 8th, 1968.

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THE WITNESS: I think he was away several months because I know I saw him after he returned from his trip.

MR. STOKES: All right. Now I want to get something Mr. Deans touched on but it wasn't answered to my satisfaction. Mr. Cauley, his resignation was accepted on May 1st or effective May 1st, 1969 and Dr. Steel resigned on early retirement on August 31st, 1968: Mr. Johnston was appointed a member pro tem of the Board from January 2nd, 1968 to December 31st, 1969, and Mr. Cross was appointed on April 17th, 1969 and that his appointment was discontinued on February 28th, 1970.

So there was a period then from the appointment of Mr. Cross on April 17th, 1969 until the acceptance of Mr. Cauley's retirement on May 1st when there actually four members of the Board?

THE WITNESS: Under the provisions of the Act and, yes, it is section 57 which states:

"In the case of the death, illness or absence of a member or of his inability to act for any cause, the Lieutenant Governor in Council may appoint some person to act pro tempore in his stead and the person so appointed has all the powers and shall perform all the duties of a member."

Now relating to Mr. Johnson, you did recite a date which I can't immediately recall.

MR. STOKES: He was appointed on January 2nd of 1968.

THE WITNESS: That's right. Dealing with that appointment in time Dr. Steele was leaving I believe, if I recall correctly on his holiday to the foreign country and would not be present and I had been advised of this and hence a pro tempore member had to be appointed or should be appointed to continue in the work of the Board. He continued in that way through, you said, to December something -- 31st, 1969. During that period of time I think Dr. Steele returned to active work at the Board and though while he still was a member he was not acting. Mr. Johnson was acting in his place.

MR. STOKES: Even though Dr. Steele was on

1 full pay from the Board he wasn't actually acting?

2 THE WITNESS: That is correct.

3 MR. STOKES: All right. Now I want to
4 get back to something that you said with regard to
5 Mr. Cauley's entitlement. While you deny having said
6 "you won't lose," you said you would intercede on his
7 behalf to assure him that he would get everything which
8 he was legally entitled to?

9 THE WITNESS: I don't think I used the word
10 "intercede" but I am not -- I would do what I could on
11 his behalf, what I felt was possible.

12 MR. STOKES: With whom would you intercede
13 in order to make sure that he got everything?

14 THE WITNESS: The retroactive payment?

15 MR. STOKES: Yes.

16 THE WITNESS: Well I would speak to members
17 of the Cabinet with that order where being dealt with and
18 I did.

19 MR. STOKES: You didn't imply that you
20 would have to intercede with the Board itself?

21 THE WITNESS: No, I didn't have to inter-
22 cede with the Board. I would have to advise the members
23 of the Board that in my discussions the normal
24 policy where their early retirement plan should apply
25 to Mr. Cauley in my view and they would take the necessary
26 steps. In that instance you could say I -- I don't
27 think it is really interceding but appointing the Board
28 with our discussion.

29 MR. STOKES: Did you have any reason to
30 believe that you should -- I hate to use the word intercede

1 since you objected to it but did you feel that you thought
2 it was necessary for you to act on his behalf or give
3 him that assurance? Did you feel that either Cabinet or
4 the Board itself might not give Mr. Cauley all that he
5 was legally entitled to?

6 THE WITNESS: I am sure the Board would
7 give them everything they were entitled to. With
8 reference to the Cabinet matter, it did require -- that
9 had to be clarified there and I felt I should do so.

10 MR. STOKES: And do you feel now, looking
11 back on it, that Mr. Cauley received everything to which
12 he was legally entitled?

13 THE WITNESS: I think it was a fair arrange-
14 ment, bearing in mind that Mr. Cauley's long years of
15 service to that Board, his health and his general situation.

16 MR. STOKES: And you feel then he was given
17 just as good a treatment as Dr. Steele was when he severed
18 his relations with the Board?

19 THE WITNESS: Well, as I recall, and someone
20 would have to verify this, I think Dr. Steele was not 65 when
21 he retired. I am not sure of this but it is my impression
22 so I think under the circumstances it is a fair and
23 reasonable arrangement for both.

24 MR. STOKES: Thank you; that is all I have.

25 MR. GOOD: Two matters, Mr. Chairman.
26 First of all the meeting with Mr. Cauley on May 5th from
27 that flowed your directions to the Board to prepare a
28 Board Order relating to the retirement?

29 THE WITNESS: Well, you could use the word
30 direction if you wish to but certainly I advised the

1 Chairman and I believe Mr. MacDonald of our conversation
2 and that I felt the early retirement provision should apply.

3 MR. GOOD: You didn't see the Board Order,
4 you said, for several months later?

5 THE WITNESS: No, sometime later.

6 MR. GOOD: So you really didn't know what
7 the terms of the retirement were?

8 THE WITNESS: I did not see the actual
9 Board Order. I assume it was just as I related my
10 understanding to him. Certainly I advised the Board that
11 after the Cabinet had dealt with the change in the salary.

12 MR. GOOD: The Board Order is dated
13 May 8th and the letter asking to be relieved of duties
14 which I presume can be called a letter of resignation,
15 a letter asking to be relieved of duties is dated
16 May 12th so in fact the Board Order then was made out
17 by the Board before the letter to you was received so
18 consequently the Board Order was made on I presume your
19 direction on the strength of the arrangements made on
20 May 5th; is that correct?

21 THE WITNESS: In my view the resignation
22 was done and it was established as between Mr. Cauley
23 and I when we met in my office. He formally resigned
24 by letter subsequently.

25 MR. GOOD: The Board Order required an
26 Order-in-Council and the salaries of the Board members
27 require Order-in-Council too?

28 THE WITNESS: Right.

29 MR. GOOD: Resignations then don't have --
30 do they have to be effected through any Order-in-Council?

1 THE WITNESS: Yes, that was referred to
2 earlier.

3 MR. GOOD: But not to next January?

4 THE WITNESS: It has to be accepted in
5 due course, yes.

6 MR. GOOD: Next January. Now if a member
7 who resigns and the order doesn't go through for six or
8 seven months, would this create any problem so far as the
9 auditing of accounts for payment or nonpayment of an
10 individual?

11 THE WITNESS: No, it is effective as of a
12 certain date.

13 MR. GOOD: Whether an Order-in-Council --
14 this is general practise, is it?

15 THE WITNESS: It was put through -- they
16 weren't exactly in the time but they were close to the
17 time of the new permanent appointments made to the Board.

18 MR. GOOD: What happens if the auditor
19 comes along and says we have no authority to pay the Board
20 because we have no Order-in-Council?

21 THE WITNESS: Well, that was not raised
22 and I think in due course they had to have the order and
23 a copy was given to them.

24 MR. GOOD: The Orders-in-Council ---

25 THE WITNESS: You could not make a new
26 permanent appointment before the resignation of the
27 previous permanent appointment.

28 MR. GOOD: The Order-in-Council is for an
29 appointment to the Board the seven months after the
30 appointment to.

1 THE WITNESS: They might theoretically
2 be but they were not.

3 MR. GOOD: In other words, there was no
4 formal acceptance by the Board as to resignations, it was
5 just an Order-in-Council at some time in the future?

6 THE WITNESS: Yes.

7 MR. GOOD: You mentioned the other day,
8 Mr. Bales, that you were aware of part of the terms of
9 the agreement of resignation, the monetary terms relating
10 to full pay until age 65. Had you at that time when the
11 Order-in-Council was made -- pardon me, when the Board
12 Order was made on May 8th, they added to this the
13 retroactive pay. Were you aware that that would be in the
14 Board Order?

15 THE WITNESS: No.

16 MR. GOOD: You weren't aware that that would
17 be in the Board Order?

18 THE WITNESS: No.

19 MR. GOOD: Because that gave it Cabinet
20 approval and this wasn't received until after?

21 THE WITNESS: That's right.

22 MR. GOOD: And you were not aware of the
23 consultancy fee after retirement?

24 THE WITNESS: No, I had an understanding,
25 as I referred to before with reference to this previously.

26 MR. GOOD: At the present time would you
27 care to put a dollar value on the consultancy fee?

28 THE WITNESS: No.

29 MR. GOOD: Do you think when the Board put
30 out the Board Order that they had something in mind as to

1 a dollar value on a consultancy fee?

2 THE WITNESS: No, I didn't.

3 MR. GOOD: Well something relating to a
4 Board member, wouldn't it eventually have to have Cabinet
5 approval?

6 THE WITNESS: Salary only is established
7 by Cabinet. The regulations of the Board or the minutes
8 of the Board are not submitted to Cabinet or to the
9 Minister.

10 MR. GOOD: I see, or anything flowing from
11 that. Do you believe that there is anything excessive
12 about the order of the Board relating to the retirement
13 of Mr. Cauley, taking all three considerations?

14 THE WITNESS: Well, the matter of the
15 consultancy fee is something that I can't anticipate
16 being there, but again I dealt with that earlier. Since
17 it is in way it would require agreement and concurrence
18 between parties before it could actually come into being.

19 MR. GOOD: But neither your approval nor
20 Cabinet approval would be required?

21 THE WITNESS: No.

22 MR. GOOD: Did you care to answer my
23 question? Do you believe there was anything excessive
24 in this final settlement?

25 THE WITNESS: I think I said before, in
26 answer to Mr. Stokes, that I thought the settlement as
27 I saw it.

28 MR. GOOD: The settlement as you understood
29 it is not the settlement that exists on the Board Order.
30 This is the point I am getting at.

1 THE WITNESS: I think it is except for the
2 last provision about the consultancy.

3 MR. GOOD: On May 8th, when this Board
4 Order was drawn up, at that time, could it be established
5 what the monetary value of the second section would be?

6 THE WITNESS: It had not been finalized at
7 that point. I had had or at least there had been -- I
8 think I was probably aware of it, a preliminary report
9 from Messrs. Hickland and Johnson as to the changes in
10 the salaries of the Chairman, Vice-Chairman and
11 the senior staff but that had not been finalized as to
12 what the matters would be. I had a pretty general idea
13 as to what it would be.

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1 MR. GOOD: One final point then, the only
2 thing in fact final about the Board order would be the
3 monetary portion in Section 1; is that correct?

4 THE WITNESS: That is in reference to the
5 sick leave and holiday credits. But again that would
6 depend -- that is correct, but it would depend if there
7 were a change in salary.

8 MR. GOOD: In your view, Mr. Bales, was
9 there complete authority with the Board to make the
10 settlement as specified here in the order of the Board?

11 THE WITNESS: Yes, the Board is a separate
12 entity.

13 MR. GAUNT: Mr. Chairman, I just have one
14 or two questions. I want clarification with respect to
15 this matter dealing with Mr. Cauley and Mr. MacDonald.
16 Mr. Cauley has said when Mr. MacDonald came to visit
17 him with a letter of resignation to him and Mr. MacDonald
18 apparently intimated to Mr. Cauley that you had sent him
19 and you said that you did not. In your view who did
20 send it to him?

21 THE WITNESS: First of all, it is not my
22 understanding that Mr. MacDonald went with a letter of
23 resignation. I understood that there was an affidavit
24 filed yesterday which would seem to deal with the
25 statement something to do with the appeal system. But
26 in any event, I did not send Mr. MacDonald and he would
27 decide himself whether he would go and so on. I can't
28 conceive that Mr. MacDonald in the senior position he
29 was in and being the responsible position that he is
30 needs anyone to tell him what he is going to do next.

1 MR. GAUNT: I can't locate it in the
2 transcript, but I am working from memory. As I recall
3 Mr. Cauley's testimony he had indicated that he had had
4 a visit from Mr. MacDonald and I am referring to the
5 incident where Mr. Cauley said that he had a tape record-
6 er and he recorded the entire proceedings and the quote
7 is that Mr. MacDonald said to me, "I have been sent here
8 by the Minister. The Minister has
9 instructed me, that is, Mr. MacDonald,
10 to write a letter which all Board
11 members would sign which the Minister
12 could read in the house because at
13 that time he was being badgered by
14 the opposition as to certain things
15 in connection with the Act."

16 THE WITNESS: I don't recall being badgered
17 in the House by members of the opposition.

18 MR. GAUNT: I don't either, but that's what
19 it says here.

20 THE WITNESS: Of course I could be of
21 assistance there. There was a newspaper story and I
22 happen to have it with me which says, "He had been sent
23 by the Minister (Mr. Bales) and then
24 he (Mr. MacDonald) was to draft a
25 letter of recommendation that the
26 Minister was to read in the legislature."
27 That's what the newspaper story says. I think that reads
28 somewhat differently and while I don't have the affidavit
29 that Mr. Deans appears to have in his hand I am led to
30 believe that in that affidavit filed yesterday it refers

1 rather to a statement about the appeal system.

2 Am I correct in that?

3 MR. DEANS: Yes.

4 MR. GAUNT: Well, in any case the impres-
5 sion was left at one stage that the letter was to deal
6 with the resignation and at another point it was with
7 respect to the appeal system of the Board.

8 THE WITNESS: I think I said in the House
9 that I did not send Mr. MacDonald to Mr. Cauley and I
10 certainly would not -- I don't know whether it is my
11 exact words, but I would not ask for a resignation in
12 that way.

13 MR. GAUNT: I accept that. The question I
14 pose is, do you know who would send Mr. MacDonald under
15 those circumstances?

16 THE WITNESS: I would have to tell you
17 the answer is no.

18 MR. GAUNT: Could you hazard a guess?

19 MR. DONNELLY: With respect, that is
20 perhaps going just a little too far I would think, Mr.
21 Chairman.

22 MR. GAUNT: Well all right, I will leave
23 that point and we will come to the matter when we are
24 dealing with the members of the Board, perhaps they can
25 shed some light on this. This is the affidavit from the
26 tape recorder and apparently Mr. MacDonald indicated to
27 Mr. Cauley, "Well the Minister has asked me to draft a
28 letter for your signature to be read in the House concern-
29 ing the administration," and apparently he had suggested
30 that you had sent him out; you say you didn't. I don't

1 think I will pursue that point. I think the proper
2 place in view of what you have said is to pursue it with
3 members of the Board. But I do want to ask you in
4 relation to what Mr. Cauley said having regard to Mr.
5 Hamilton's appointment, it was Mr. Cauley's view that
6 Mr. Hamilton was in some fashion trying to shove him out.
7 Were you aware of any such lobby?

8 THE WITNESS: No, I was not.

9 MR. GAUNT: When did you first meet Mr.
10 Hamilton or were you friends of long standing?

11 THE WITNESS: I met Mr. Hamilton -- I think
12 I had known him previously from being a member of the
13 T.T.C. Commission when I was a counselor in North York,
14 we would meet casually that way. I met him after I went
15 to the Department of Labour because Mr. Hamilton was
16 the Secretary-Treasurer of the Ontario Federation of
17 Labour at that time and remained so until his appointment
18 to the Workmen's Compensation Board and in that position
19 I would meet with Mr. Archer and Mr. Hamilton and other
20 officials of the Federation from time to time and
21 certainly Mr. Hamilton was usually present when the
22 Federation briefs used to be submitted to cabinet each
23 year.

24 MR. GAUNT: I understood you to say as far
25 as you were concerned that you had considered the appoint-
26 ment for some weeks, several months?

27 THE WITNESS: I considered -- I said there
28 were a number of names considered over the fall of 1969.

29 MR. GAUNT: And you felt that Mr. Hamilton
30 was the best person to fill that?

THE WITNESS: There were two reasons (A) that I felt Mr. Hamilton would be a very able person to be appointed to that position and I hold the same view today.

MR. GAUNT: With respect to the 50 people who have taken early retirement and since Mr. Cauley has left, is this of concern to you? Do you see this in any particular light as an emanation of discontent within the Board or is there any particular construction you place on that?

THE WITNESS: I wasn't aware just until recently as to how many until this matter arose, as to how many have taken early retirement. I think you would have to look at the circumstances of each one as to, for example, what was their age, what type of retirement did they have. I might want to retire when I am 62 or three or four, something like that. I don't want to retire yet, but I

MR. ALLAN: Mr. Chairman, I am going to be very brief, but I think one of the things we are interested in as a Committee is to inquire into the ethics of the administration within the Board and to maybe when we finish make some recommendations that would be worthwhile. Perhaps you don't want to answer this question and if you don't just say so, but as I have been listening to this discussion and endeavouring to sort out where the cabinet came in and where the Board came in, I am wondering -- I am wondering two things -- I am wondering if perhaps cabinet shouldn't be consulted when a member of the Board retires who has been an appointment of cabinet really,

/6
1 and this is your responsibility, with respect to continuing
2 as a consultant -- I am wondering whether the Board them-
3 selves should have all that responsibility in view of the
4 fact that that person has never been an employee of the
5 Board and in view of the perhaps temptation to be kind to
6 someone after they have retired if that shouldn't have
7 to have the approval of cabinet.

8 The other thing that I would like to ask you,
9 and this -- and you not being the minister now you may
10 not want to answer -- but I would like to know whether in
11 your opinion that there shouldn't be an effort made by
12 the Workmen's Compensation Board to follow the principles
13 that are laid down so far as pensions, the acknowledgement
14 of sick benefits and holiday benefits by the Civil Service
15 Commission, whether boards and commissions shouldn't
16 endeavour to follow a policy that is adopted by the Civil
17 Service Commission rather than be able to go off in all
18 directions by themselves?

19 THE WITNESS: Mr. Chairman, I think that in
20 view of the growth of separate bodies, Crown corporations
21 today, and it is hard to distinguish sometimes between
22 an employee of one and a civil servant in the government,
23 I think that there is merit in having uniformity. We have
24 procedures and arrangements and regulations today that
25 we didn't have some few years ago and the things are be-
26 coming much more organized in that way and I think it is
27 something that we should move to in reference to all of
28 our Crown corporation employees as well as government
29 employees.

30 THE CHAIRMAN: Have you a further question,

1 Mr. Allan?

2 MR. ALLAN: No.

3 THE CHAIRMAN: We have had a request from
4 some of the other members of the legislature and I am
5 wondering how the Committee feels. It is almost 6:00
6 o'clock, but perhaps if the questions that other members
7 have are brief and could be worded in a very short time
8 we could finish with this witness today.

9 Would that be agreeable?

10 THE WITNESS: I am quite agreeable to
11 whatever time the Committee wishes.

12 THE CHAIRMAN: Depending on how long this
13 questioning goes on.

14 MR. LEWIS: My colleague may wish to take
15 more time. Can I try to clear up a couple of things,
16 Mr. Bales?

17 Section 57 which you quoted in the Act
18 says, "In the case of the death, illness
19 or absence of a member or of his in-
20 ability to act from any cause, the
21 Lieutenant Governor in Council may
22 appoint some person to act pro tempore
23 in his stead and the person so
24 appointed has all the powers and
25 shall perform all the duties of a
26 member."

27 Of a member, not a chairman or a vice-chairman, but of
28 a member.

29 Section 55 of the Act appoints a chairman
30 and a vice-chairman. Section 56 of the Act says,

1 "In the absence of the chairman or in
2 case of his inability to act or if
3 there is a vacancy in the office, the
4 vice-chairman may act as and has all
5 the powers of the chairman."

6 It would seem to me both implicit and explicit in the Act
7 the assumption is that either the chairman or the vice-
8 chairman will be present at all hearings of the Board.
9 Now, how does that reconcile with two pro tempore members
10 of the Board meetings and ruling in the absence of either
11 chairman or vice-chairman?

12 THE WITNESS: A person might be appointed a
13 pro tempore vice-chairman of the Board.

14 MR. LEWIS: But (A) they were not and (B)
15 apparently ---

16 THE WITNESS: I am not sure they were not
17 at the appropriate time.

18 MR. LEWIS: And (B) they cannot, "...and
19 shall perform all the duties of a
20 member..."

21 THE WITNESS: A member is really one of
22 three. The chairman is chairman and member of the Board.
23 The vice-chairman is vice-chairman and member of the
24 Board.

25 MR. LEWIS: You do not know whether the
26 members appointed were pro tempore vice-chairman or
27 chairman, you cannot recall that?

28 THE WITNESS: I would say to you -- I am
29 going by recollection -- that Mr. Johnston, when he was
30 appointed pro tempore member was appointed as such. I

1 believe that after Mr. Cauley's resignation, and he was
2 away from the Board, Mr. Johnston was named the pro
3 tempore vice-chairman of the Board for a period of time.

4 MR. DONNELLY: Mr. Chairman, I wouldn't
5 presume to answer Mr. Lewis' question, but my colleague
6 Mr. Watt has pointed out and I think with some merit that
7 Section 61 refers to each of the members and it doesn't
8 seem to make any distinction as a member being other
9 than vice-chairman or chairman. It may be of some help
10 for the discussion on that point.

11 MR. LEWIS: I would be interested in pur-
12 suing it and hearing of the actual formal appointment.
13 Perhaps that Board order of pro tempore vice-chairman
14 or chairman. I see a situation where one could quite
15 conceivably appoint pro tempore personnel and the chairman
16 never have to sit. And as I understand it, we are nearly
17 at that now.

18 Can I ask in relation to Section 61 -- I
19 am glad it was pointed out -- it says, "Each of the
20 members shall devote the whole of his
21 time to the performance of his
22 duties under this Part."

23 As I read this part of the Act the primary performance
24 of the duties involves the hearing of payments of appeals
25 before the Board.
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1 Under this part that is what this part deals with in
2 all its particulars.

3 THE WITNESS: The part that is headed
4 at the beginning of Section 54, is "Workmen's Compensation
5 Board."

6 MR. LEWIS: No, as a matter of fact the
7 part is headed, "Part I, Compensation" I presume.

8 THE WITNESS: Would you give me a page,
9 Mr. Lewis?

10 MR. LEWIS: Page four.

11 THE WITNESS: It deals I think with all
12 the affairs of the Board, not just the hearings.

13 MR. LEWIS: But as I see the affairs of
14 the Board, the affairs of the Board are obviously weighted
15 to the hearing of claims.

16 THE WITNESS: And the paying of compensation.

17 MR. LEWIS: I am trying to envisage a
18 situation where it is conceivably possible that the absence
19 of the Chairman for 65% of the hearings could be justified.

20 The phrases of the Minister were, if I
21 got them correctly, that he brought the members of the
22 Board together recognizing that they were all equal
23 members of the Board. The chair would face (inaudible)
24 but that apart from his administrative duties he is just
25 a member of the Board. Is it possible for this Minister
26 to conceive of a situation where the Chairman would be
27 65% absent for these hearings of the Board?

28 THE WITNESS: You are quoting certain figures
29 there.

30 MR. LEWIS: They are accurate figures on the

1 basis of what we have received.

2 THE WITNESS: He may well be and I don't
3 know, you would have to ask that of the person, but he
4 might well be doing other matters in reference to the
5 Board itself at the same time.

6 MR. LEWIS: You said, thought, that the
7 hearing of the claim was the primary responsibility if
8 I heard you.

9 THE WITNESS: Well I said I regarded it
10 as very important.

11 MR. LEWIS: I think the word was primary.

12 THE WITNESS: It may have been, I don't
13 recall exactly.

14 MR. LEWIS: Do you think a primary
15 responsibility is filled on the basis of one-third of
16 attendance at the hearing of the claims?

17 THE WITNESS: In my view members of the
18 Board should attend just as many hearings as is possible
19 and in my view it should be a large number.

20 MR. LEWIS: It should be a large number.
21 You wouldn't characterize one-third as a large number?

22 THE WITNESS: No, not necessarily.

23 MR. DONNELLY: Mr. Chairman, all afternoon
24 I have really tried not to interfere because I don't
25 want in any way to give the impression of suppressing
26 any expression or thought or fact finding expedition,
27 but may I just put this before the Committee: the
28 Committee would be wise in my respectful opinion to avoid
29 a situation where it may be taken as pre-judging a man
30 who hasn't been heard. Now I just as a word of caution

1/3 1 ask you to keep that in mind.

2 MR. LEWIS: Fine. With that note of
3 caution in my mind I by no means withdraw the line of
4 questioning that I pursued with the Minister. I think
5 it is a legitimate line of questioning, and I think the
6 rather more important thing with respect is the point
7 that Mr. Miller made, which is the apparent tenuous
8 contact between Minister and Board which has emerged in
9 these hearings. Do you not agree that that would be
10 fair, that the direct authority line is not as direct as
11 other Ministers have over aspects of their department?

12 THE WITNESS: Not as I pointed out to you.
13 The Workmen's Compensation Board is not directly a part.
14 As I maintained before we should maintain closer liaison
15 with that Board and to be sure that you are kept advised
16 as to what the matters of the Board are and the policies
17 and various matters that are developing.

18 MR. LEWIS: You have talked about Mr. Decker
19 and the fact that he was new and when a man is new I take
20 it the job is a little more difficult, and I presume that
21 was true of Mr. Hamilton as well. I presume under such
22 circumstances it would be fair to feel that the Chairman
23 of the Board might well be there for hearings given the
24 novelty for both newer members.

25 THE WITNESS: I think Mr. Hamilton, with
26 respect, had a more direct knowledge of the workings of
27 the Board than Mr. Decker did when he came.

28 MR. LEWIS: But it is not an unfair assumption
29 to feel. I haven't seen the subsequent attendance records,
30 I think the Committee should call for them up until this day

1 but it is perhaps not an unfair assumption to feel that
2 for the simple operation of the Board new members need
3 the reinforcement and the support of previous experience;
4 is that fair?

5 THE WITNESS: It was my understanding that
6 was given and certainly I urged the Chairman to bear/in
7 mind to new members and I know he tried to provide them
8 with that as did Mr. MacDonald, all of the information
9 that they would require.

10 MR. LEWIS: Mr. Bales, you have had two
11 vice chairman in a row speak to you about difficulties
12 within the Board. You don't feel that established a
13 pattern of any kind?

14 THE WITNESS: That it established a
15 pattern, no, but it was a matter of concern to me about
16 the Board and I was anxious for the proper functioning
17 of that Board.

18 MR. LEWIS: Would it be fair to say that
19 it may have been on your mind but at first Mr. Cauley
20 and then Mr. Decker should approach you, vice chairman,
21 important posts, with anxieties about the workings of
22 the Board?

23 THE WITNESS: It fazed.

24 MR. LEWIS: With the people involved.
25 You said that Mr. Cauley should receive his due
26 entitlement. I take it that you regard the Board order
27 as a due entitlement?

28 THE WITNESS: When I said due entitlement,
29 I said that he should use or have available to him
30 assistance for the credits that he had built up over the

1 years, and should have those converted in accordance with
2 early retirement policies of the Board to financial
3 assistance. I thought he should have one retroactive
4 salary adjustment which was approved by Cabinet.

5 MR. LEWIS: A Board order which explicitly
6 says a consultancy for a year afterwards, I appreciate
7 you knew nothing of that. Surely it would be fair to
8 honour that since it had in fact been established -- I am
9 not saying it would be honoured now, but surely it was
10 fair to assume that it would be honoured in the year
11 following 1971.

12 THE WITNESS: I think one has to establish
13 what the consultancy is about and when it is going to be
14 paid and how much time one is going to spend on it.

15 MR. LEWIS: Right, but there was an
16 assumption implicit in what you are saying that however
17 the particulars of a consultancy, it would be established.

18 THE WITNESS: The consultancy must always
19 be at the option of the Board or the group requesting the
20 advice or counsel of a consultant.

21 MR. LEWIS: Do you think it would be logical
22 to feel that the Board hadn't passed the order to have
23 said, if I remember the phrase, "will be established."
24 Would it be logical for them to call Mr. Cauley in and
25 discuss the consultancy with him?

26 THE WITNESS: Well I think that is an
27 internal matter for them and to determine for them in
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1 advance what area they wish to have a consultancy on.

2 MR. LEWIS: But it would be logical for
3 them to approach the man whom they designated would be
4 their consultant?

5 THE WITNESS: If they were going to have
6 a consultant's fee.

7 MR. LEWIS: If they were going to have a
8 consultant's fee, you are saying that their explicit
9 assertion of establishing a consultant's fee didn't
10 imply that they would?

11 THE WITNESS: It didn't set up what the
12 consultancy was to be about.

13 MR. LEWIS: No, but one presumes -- I am
14 finding this difficult -- one presumes that when a
15 consultancy is established they envisaged a consultancy
16 of some kind?

17 THE WITNESS: Yes, that's true. From my
18 standpoint if I was drafting it I would want to have it
19 set out the purpose of a consultancy before I would
20 adopt that kind of language.

21 MR. LEWIS: But you weren't drafting it,
22 the Board was drafting it and therefore they established
23 and therefore it is reasonable to believe that they
24 would act on their explicit assertion by calling Mr.
25 Cauley in and talking about it.

26 THE WITNESS: Well that is up to the Board
27 to determine what was in their mind.

28 MR. LEWIS: It doesn't strike you as odd
29 that the Board didn't proceed to honour an explicit
30 section of its order, of its own order?

1/7

1 THE WITNESS: Well normally it would be
2 done I think, but it depends upon circumstances at
3 the time.

4 MR. LEWIS: Circumstances at the time.
5 There is no sense -- circumstances at the time.

6 THE WITNESS: For some useful purpose
7 to the Board is going to be served by having a consultancy.

8 MR. LEWIS: You would think me unfair if
9 I suggested that there was a punitive aspect in not
10 fulfilling that explicit undertaking?

11 THE WITNESS: Yes, I would think it unfair.

12 MR. LEWIS: But you cannot explain to me
13 why Mr. Cauley was not approached?

14 THE WITNESS: No.

15 MR. LEWIS: One other question, Mr.
16 Chairman, to the Minister. When you responded in the
17 House to the matter of Mr. Cauley's periodic absences,
18 you did not mention having heard at all from any doctor
19 or having had any medical opinion. Did you forget at the
20 time?

21 THE WITNESS: No. Let's put it this way,
22 I didn't necessarily say. The stories you may recollect
23 appeared in the morning paper of March 14th I believe,
24 and I responded in the House in the afternoon. In that
25 period of time I had to recollect the best I could the
26 circumstances and looking at it wasn't too bad in my
27 recollection of that period of time.

28 MR. LEWIS: I won't pre-judge your
29 recollection. I gather it has been refreshed between
30 March 14th and the statement you issued today?

1 THE WITNESS: It has given me time to
2 reflect further, yes, and there is also, as I understand
3 it from the transcript that I saw, this was filed, a
4 statement from Dr. Powell, it was filed.

5 MR. LEWIS: Right.

6 I don't think that I should pursue it
7 further, Mr. Chairman.

8 THE CHAIRMAN: Mr. Lawlor, before you
9 proceed to question the witness, I am wondering have you
10 any idea how long this might take?

11 MR. LAWLOR: Mr. Chairman, I am in the
12 hands of the Committee.


13 THE CHAIRMAN: Well I may say I know many
14 of our Committee members have firm commitments right
15 after 6:00 o'clock.

16 MR. LAWLOR: Well, Mr. Chairman, the wind
17 bloweth where it misteth and I do likewise, depending
18 on the direction of the gale. And I don't know how long
19 it is going to take. I have got heads of subject matter.

20 THE CHAIRMAN: That being so, we will
21 adjourn until tomorrow morning at 10:00 o'clock.

22 --- Upon adjourning at 6:00 p.m.

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I N D E X

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E X H I B I T S

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>	<u>PAGE NO.</u>
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1 --- Upon commencing at 10:20 a.m.

2 DALTON BALES, resumed:

3 THE CHAIRMAN: I call this meeting to order.

4 Last evening before adjourning we had come I believe to
5 one of the last members who wanted to ask questions of
6 the witness. Mr. Lawlor, would you carry on?

7 MR. LAWLOR: Yes. Thank you, Mr. Chairman.

8 Mr. Minister, when you became the Minister
9 of Labour in 1966 did you know about the blow up over the
10 photographs that had occurred at an earlier time?

11 THE WITNESS: No, I did not.

12 MR. LAWLOR: When did you first become
13 aware of that?

14 THE WITNESS: I first became aware of it
15 in any detail this spring when it was part of the newspaper
16 story concerning this matter.

17 MR. LAWLOR: At some point you had a con-
18 versation with Mr. Cauley about his refusal or failure to
19 attend meetings.

20 THE WITNESS: I don't believe I said that.

21 MR. LAWLOR: Did you not have a private talk
22 with him about holding up, postponing, pulling out of
23 hearings that were going on before the Board?

24 THE WITNESS: If you will read the transcript
25 you will note that I said in response to a question in the
26 House it was one of the things I had wanted or was going to
27 talk to him about in that spring of 1969.

28 MR. LAWLOR: Did you?

29 THE WITNESS: Well as I indicated yesterday
30 I had a number of points that we were going to discuss at

1 the meeting of May 5th or 6th and the meeting took a
2 different turn of events than I anticipated when Mr.
3 Cauley offered his resignation, offered to resign.

4 MR. LAWLOR: I am thinking of an earlier
5 time. In the Hansard transcript of March 14th you say
6 as follows:

7 "I told them ---"

8 THE WITNESS: If you could just give me
9 the page.

10 MR. LAWLOR: Page 369, the middle of the
11 left column.

12 THE WITNESS: Yes.

13 MR. LAWLOR: "I told them they had to recon-
14 cile those differences. I also told Mr.
15 Cauley that we could not have Board
16 meetings postponed at the last minute
17 because there were not sufficient members of
18 the Board there to conduct the business."

19 THE WITNESS: That was an earlier occasion
20 that I mentioned yesterday when I met all of the Board
21 members and on other occasions earlier. I was placing it
22 in 1969.

23 MR. LAWLOR: There was some claimant
24 apparently before the Board by the name of MacDonald.
25 Would you remember that?

26 THE WITNESS: I recall Mr. Cauley referring
27 to that incident but that was not one that was drawn
28 particular attention to me. I was thinking of the whole
29 general situation of meetings, of hearings of claimants
30 before the Board.

1 MR. LAWLOR: Would you have got your
2 information about this postponing of Board meetings
3 from Mr. Legge?

4 THE WITNESS: I dealt with Mr. Legge at
5 the hearing and I think at that time I said, if I recall
6 correctly, that it had been indicated to me at times that
7 there had to be a quorum for these meetings and there
8 had been a little concern -- some concern expressed to
9 me, little anxiety, particularly by Mr. Johnston that
10 there would be a quorum present, that Mr. Cauley would
11 be present to meet with him or Mr. Legge present to meet
12 with him so that the hearings could proceed. I think
13 there had been -- and bear in mind that there are a
14 great many hearings, comparatively large number of hearings
15 and sometimes there are delays. Now I think those hearings
16 complaints before the Board are important, that they
17 should proceed as scheduled, particularly because the
18 claimants come from various parts of the province here
19 and when they do so I would not want to see those hearings
20 postponed because there was not sufficient quorum of the
21 Board present to deal with them.

22 MR. LAWLOR: Well one would have to of
23 course agree with that. What I am after though is who --
24 you mentioned Mr. Johnston -- you had direct relations
25 with the Chairman of the Board and did the Chairman
26 complain of these matters, postponements?

27 THE WITNESS: No, I don't think the Chairman
28 complained about them.

29 MR. LAWLOR: Would Mr. Cauley in reply to
30 you not indicate to you his chagrin on the particular

1 occasion which no doubt precipitated this thing that he
2 had gone to Mr. Legge's office, that he had spoken to
3 his secretary and asking to get himself out of there and
4 attend a few of the hearings. Didn't he in other words
5 try to defend himself?

6 THE WITNESS: We were talking about a
7 number of matters at the time and this was only a small
8 part of the general overall picture. Mr. Cauley assured
9 me, and the record shows I think that he attended hearings
10 -- he attended a large number of the hearings. I was
11 particularly -- my thoughts of 1969, I was concerned because
12 there had been some anxiety expressed to me as to whether
13 there was enough -- by Mr. Johnston, as to whether people
14 would be there to attend the hearings with him or other
15 people, so that the hearings could proceed. The 1968
16 meeting was particularly dealing with the policies of the
17 Board and the unanimity of view in reference to that once
18 a decision had been taken.

19 MR. LAWLOR: A small part of the question
20 that I am trying to zero in on and fix our attention to
21 for a few moments -- I want to know whether Mr. Cauley
22 replied to your criticism, to your injunction not to
23 postpone these meetings, because in the testimony he has
24 given before us he was very vehement about the reason
25 for at least one particular incident and I want to know
26 if he replied to you in time.

27 THE WITNESS: No, there is not -- I think
28 you are placing undue emphasis on it because that discussion
29 took place at an earlier time. It was one of the matters
30 I would have discussed with him to obtain his views in the

1 matter in 1969 but that did not take place -- or at
2 least in May of '69 did not take place because the
3 meetings took a different course than I had planned
4 and anticipated.

5 MR. LAWLOR: What I am after, Mr. Minister,
6 really, is if this had been brought to your attention as
7 you had hoped it was, then you in turn would be perhaps
8 under some obligation to rap the knuckles of the Chairman
9 of the Board and ask him in turn to pull up his socks
10 in this regard.

11 THE WITNESS: We were speaking about Mr.
12 Cauley. I also spoke to the Chairman personally about
13 meetings as well, hearings as well.

14 MR. LAWLOR: About attending them.

15 THE WITNESS: Well I was concerned they
16 proceed because I don't believe in speaking to one member
17 of the Board in these matters, I think all of them have
18 that responsibility.

19 MR. LAWLOR: There is one other question
20 and that has to do with the 1968 amendments to your
21 Legislation and to Mr. Cauley's very heartfelt repugnance
22 for touching those amendments. My feeling is, or as it
23 is set forth in the transcript here, that he had no --
24 or felt he didn't have any access to -- it reads as
25 follows so you get the picture what has been said:

26 "Now in the 1968 amendments the first
27 I knew of that was when I read the
28 first ---"

29 THE WITNESS: Mr. Chairman, I wonder if
30 Mr. Lawlor would just tell me what he is reading from,

1 | whether it is Hansard ---

2 | MR. LAWLOR: This is the Hansard I have,
3 | the rough Hansard, Page 18 of the hearings of the 5th
4 | day of April. This is Mr. Cauley's testimony,

5 | "Now in the 1968 Amendments, the first I
6 | knew of them was when I read the First
7 | Reading that was tabled in the House. And I
8 | hit the bloody roof. I said, 'This is the
9 | most ridiculous thing I have ever seen.
10 | This will defeat the Government,' and I
11 | was told the following day, and I am sure
12 | Mr. Bales will remember this and will agree
13 | with it - the following day I got the
14 | message from Mr. MacDonald - not from Mr.
15 | Bales or the secretary of the Board, that
16 | the board were to be before the Cabinet
17 | to discuss these amendments. But I,
18 | the vice-chairman, was not to open my
19 | mouth because it would be too obvious that
20 | I am fighting with the chairman. Well,
21 | now if this is what the government wants
22 | for somebody to sit idly by, knowing a
23 | piece of legislation is being proposed that
24 | will defeat them, God help them - this
25 | isn't a successful politician."

26 | Not too unsuccessful, Dalton?

27 | THE WITNESS: One would have to judge that.
28 | I have got my own views on it.

29 | MR. LAWLOR: "And I want to remind you
30 | who were members of the Legislature at that

1 time that the alarm bells rang for two
2 hours and thirty-five minutes and I helped
3 one of the members round up some of them
4 in the King Edward Hotel so they could go
5 back and vote."

6 And then he says when you got to the Cabinet Meeting he
7 was placed in a position very close to the hallway, as
8 he puts it, practically out in the hall. What about all
9 this? Did you give these instructions; why did you not
10 consult with the Board before first reading; what was
11 going on?

12 THE WITNESS: Mr. Lawlor, I think this has
13 been dealt with earlier this week and as I understand it
14 -- I don't have the transcript here -- but I think that
15 there has been -- it is my understanding a memorandum has
16 been filed with the Committee signed by Mr. Cauley in
17 reference to the recommendation from the Board concerning
18 the McGillivray report. I don't want to be overlong but
19 perhaps I can go back very slightly. The McGillivray
20 report was issued in September of 1967. It made a number
21 of recommendations, some of which were changed in adminis-
22 trative procedures, others changes required Legislation.
23 I requested the Board at that time that the recommendations
24 should be analyzed and reports given to me as to those
25 that would be implemented through their change in
26 regulations or their views on those changes, and also
27 reports that would deal with the legislative changes.
28 That required a great deal of work by the staff of the
29 Board and I am sure careful and serious consideration by
30 the members of the Board itself. I was provided with the

1 reports from time to time, particularly in reference to
2 the legislation and I believe -- as I say, my understanding
3 is there was a signed memorandum from the Board on that.
4 As Minister and as Government we have responsibility
5 for developing the changes in that legislation; that was
6 done in the early months of 1968. In May I believe I
7 said yesterday, and that's the way it was, I took those
8 recommended changes in the Workmen's Compensation Act,
9 and they were quite extensive, I took them to Cabinet
10 for discussion and decision and it was my practice when
11 dealing with matters of that nature involving extensive
12 changes in the Workmen's Compensation Board Act to ask
13 the members of the Board to go to Cabinet, as well as
14 the senior officers, and I believe Mr. MacDonald and Mr.
15 Poole went. The Cabinet as a whole meets -- or at least
16 that was the procedure then -- it is slightly different
17 now -- the Cabinet meets and the members are asked to
18 come in when I am dealing with the legislation in
19 case there are matters they wish to express or questions
20 that are raised by Cabinet; it was dealt with in that
21 way. Subsequently at further meetings Cabinet gave
22 consideration to them and finalized our decisions in
23 reference to those changes and subsequently the Bill
24 was finalized and represented to the House, and my
25 recollection was that those changes received general
26 approval, I think probably even from yourself, Mr.
27 Lawlor, and they passed the House, they were dealt
28 with I think in second reading in June of 1968, and
29 third reading probably in July, because the House
30 adjourned I think about the middle of that month.

1 MR. LAWLOR: You know, this is all very
2 fine, Mr. Minister, and a very elaborate answer, but
3 it's not an answer to the question I was asking. It's
4 maybe all true that they went through Cabinet. What
5 I am asking is, did you or did you not instruct anyone
6 to tell Mr. Cauley to keep his mouth shut, or did you
7 make such arrangements as to have him virtually excluded
8 from the meeting because he may have caused you some
9 embarrassment? Now that is the question.

10 THE WITNESS: Mr. Chairman, I do not
11 invite people to a Cabinet meeting to give their views
12 and to tell them to keep quiet. All members of Cabinet
13 are free at any time to ask any member that is there
14 or any person that is there any question they may so wish.

15 MR. LAWLOR: So that the message from
16 Mr. MacDonald again was something that was not deputed
17 by you?

18 THE WITNESS: I am not sure -- I know
19 nothing of any such message by Mr. MacDonald. I would be
20 rather doubtful that there was such a message.

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1 MR. LAWLOR: In the famous conversation
2 of May the 5th in your office did Mr. Cauley at any time
3 during that conversation make any mention of the
4 possibilities of alternative employment should he leave
5 the Board or should he resign and what the terms would
6 be? Would he, for instance, mention that he was an old
7 railroad man in a position to go back to working for
8 the railroad?

9 THE WITNESS: No mention of that.

10 MR. LAWLOR: Was there anything along the
11 lines of a conversation which is set forth at page 28
12 of the April 5th hearings here, Mr. Cauley is answering
13 questions of Mr. Deans and he says -- I am starting --
14 I am not reading the whole thing because the beginning
15 is not relevant, "...and I said, 'Well this isn't going

16 to get you' - Dalton you will recall
17 'this isn't going to get you off the
18 hook.' Because the minute I go out
19 to a ball game or the minute I go to
20 play hockey, or the minute I take my
21 hockey team out to coach them, people
22 are going to say, you know, 'How the
23 hell is he sick?' So I agreed, I
24 agreed not to appear out in public
25 for a minimum of six months unless..."

26 Do you remember that conversation?

27 THE WITNESS: I do not.

28 MR. LAWLOR: That is pretty vivid stuff, you
29 know, but it doesn't register?

30 THE WITNESS: That is correct.

1 MR. LAWLOR: Is the statement contained on
2 page 31 that there were no Board meetings at all from
3 May the 1st, 1969 until April or March of 1972?

4 THE WITNESS: No Board meetings?

5 MR. LAWLOR: No Board meetings. The con-
6 tention is, yes, May 1st, 1969 until April or March of
7 1970.

8 THE WITNESS: Are you talking about Workmen's
9 Compensation Board meetings?

10 MR. LAWLOR: Yes.

11 THE WITNESS: That is within the minutes
12 of the Board.

13 MR. LAWLOR: Well, if that were the case
14 you as a Minister having some responsibility in that
15 regard, would you think that was somewhat questionable?

16 THE WITNESS: Are you speaking about Board
17 meetings with me or Board meetings?

18 MR. LAWLOR: No, I am speaking about meetings
19 of the Workmen's Compensation Board internally.

20 THE WITNESS: Well I am sure you will have
21 to look at the record and I am sure that there were
22 meetings, but the records would show that.

23 MR. LAWLOR: Secondly, were there meetings
24 during this period?

25 THE WITNESS: Incidentally, where is that
26 in this transcript?

27 MR. LAWLOR: We will find that out from Mr.
28 Legge.

29 THE WITNESS: No, but you are quoting from
30 something, Mr. Lawlor.

1 THE CHAIRMAN: The witness asks if that is
2 in the transcript there.

3 MR. DONNELLY: Mr. Chairman, does that
4 question touch on the legality of the meetings or whether
5 there were meetings at all?

6 MR. LAWLOR: No, just the fact of the
7 meetings.

8 MR. DONNELLY: The fact of the meetings?

9 MR. LAWLOR: Yes, as to whether or not
10 there were meetings.

11 MR. DONNELLY: Could the witness ask the
12 source of your statement, sir, could he be furnished with
13 it?

14 MR. LAWLOR: Page 31 of the transcript,
15 take a look at it.

16 Were there any meetings with you during
17 that period? I mean this was a full year, Mr. Minister,
18 I understand with you.

19 THE WITNESS: Mr. Lawlor, I am just looking
20 to see what you have read from.

21 THE CHAIRMAN: Would you quote that, Mr.
22 Lawlor?

23 MR. LAWLOR: Mr. Cauley starts out, "Well,
24 there were two or three pro tempore
25 people, but if you read Section 57
26 a pro tempore commissioner can only
27 be appointed to act in the stead of
28 a member. Read it. Of a member who
29 is unable to attend the hearings
30 through illness, so on and so on and

1 so on.

2 So there was no Board from May
3 1, 1969 until either April or March
4 of 1970."

5 THE WITNESS: With respect, Mr. Chairman,
6 what Mr. Lawlor is reading is a matter -- is an opinion
7 of Mr. Cauley that there were no meetings. He is not
8 saying there were no meetings; he is giving an opinion.

9 MR. LAWLOR: He is giving an opinion that
10 there were no Board meetings, yes.

11 During this period of time, this year, did
12 you have any meetings with the Board?

13 THE WITNESS: Well, I explained a number of
14 times and I saw the Chairman on a frequent and regular
15 basis and I saw the members of the Board itself as well.

16 MR. LAWLOR: The full Board?

17 THE WITNESS: Yes. At that point in time,
18 from May of 1969 through, the people serving on the Board
19 would be Messrs. Legge, Johnston and Mr. Cross who was
20 here yesterday. I recall clearly meetings those three
21 men together.

22 MR. LAWLOR: If I insisted would you be
23 able to tie the date down, Mr. Minister?

24 THE WITNESS: No, I cannot.

25 MR. LAWLOR: There is a final matter that
26 I want to discuss a little bit is this, and I don't know,
27 Mr. Chairman, and I am in your hands as to whether to
28 pursue it. I want to bring it to the Minister because
29 I don't want to bring him back. It has to do with these
30 50 selective cases of senior staff who were retired on

1 special terms perhaps earlier than they ought to have
2 been; that what I am anxious to discover and learn if the
3 Minister can help us in this regard -- that my questions
4 would all lead to would be to try to find out whether
5 there was a pattern established in the relationships with
6 these numerous individuals. It has been conceded by
7 Mr. Legge that there were approximately 50 who took earlier
8 retirement. Now, and secondly I make the wry comment if
9 I may that on the basis of that kind of retirement, you
10 know, nobody will last until they are 65 because if the
11 terms are at all palatable they will all quit at 63 and
12 64 and get an extra year of alleviation.

13 THE WITNESS: I have heard some people
14 advocate retiring at an earlier age, Mr. Lawlor.

15 MR. LAWLOR: Well that is true, but I still
16 don't think -- this is more argument than for the
17 Committee.

18 Can you help us on that? Do you have the
19 terms, the names or do you know about the situation on
20 this retirement?

21 THE WITNESS: No. I was advised this
22 spring when I asked the question as to how many retired
23 earlier and I was given the same answer, 50 odd; that
24 those would be, I think, are almost all staff people
25 except for Mr. Cauley and perhaps Dr. Steele, but others
26 are those on regular staff and that would be a matter
27 dealt with internally by the Workmen's Compensation Board.

28 MR. LAWLOR: Final question: In your letter
29 of September 9th to Mr. Cauley you used the term -- well,
30 the sentence reads at page 30: "Since you were vice-

1 chairman of the Board at that time,
2 this change would be applicable to
3 you for the period from October 1,
4 1967 up until the date of your normal
5 retirement."

6 THE WITNESS: Right.

7 MR. LAWLOR: Did you find any ambiguity in
8 the phrase "your normal retirement" because -- let me
9 elaborate the question -- because you know under the
10 Act the age for retirement is 75 at the outset, that is
11 the maximum?

12 THE WITNESS: That is the maximum age, not
13 the normal.

14 MR. LAWLOR: Is it your contention that
15 the normal age of retirement is not the maximum age?

16 THE WITNESS: Under the provision of the
17 Act the person is required to retire at age 75. My
18 view, that is too senior of an age for people on the
19 Board. The normal at age 65 they can retire with full
20 superannuation and I think that that is a proper and
21 reasonable age for them to retire. There have been
22 cases as Mr. Cauley mentioned, Mr. Morrison who was
23 appointed to the Board in 1940 odd, '43 or '44, at age
24 66 and I think he went at age 69. I don't think anyone
25 has served to age 75.

26 MR. LAWLOR: Do you think about that in
27 your own department in the administration of justice too?
28 That is a facetious question.

29 THE WITNESS: It is a facetious question
30 perhaps and I know what you are referring to, but it's

1 a matter perhaps for which I do not have legislative
2 control.

3 MR. LAWLOR: Thank you very much.

4 MR. FERRIER: I have one question of Mr.
5 Bales. It is customary when a senior public servant
6 retires or resigns for the particular ministry or depart-
7 ment to issue a press release when this happens. Was
8 this done in Mr. Cauley's case?

9 THE WITNESS: Yes, it was done sometime
10 later because I wanted to do it at the time that I
11 announced the new appointments. I think it is a better
12 sequence to do it in that way and when the appointments
13 of Mr. Decker and Mr. Hamilton were announced there was
14 also an announcement of Dr. Steele's and Mr. Cauley's
15 retirement.

16 MR. FERRIER: Both Dr. Steele and Mr.
17 Cauley at that time?

18 THE WITNESS: Yes.

19 MR. FERRIER: Thank you.

20 THE CHAIRMAN: Are there any further
21 questions of this witness or members or other members?

22 MR. GOOD: Mr. Chairman?

23 THE CHAIRMAN: Mr. Good.

24 MR. GOOD: A couple of short questions. In
25 that regard, Mr. Bales, when was that?

26 THE WITNESS: That was the appointments
27 of Mr. Decker and Mr. Hamilton were announced in February
28 of 1970 and that's when the statement was made.

29 MR. GOOD: So Mr. Cauley had been off
30 work from April of '69 until February of '70 before there

1 was any public announcement?

2 THE WITNESS: That's right. It was widely
3 known, but it wasn't released.

4 MR. GOOD: His letter to you of May 30th
5 states: "As I promised you I would make no
6 statement whatever concerning retire-
7 ment as a member of the Board until
8 after you had made a public announce-
9 ment. I am really disturbed by the
10 letters wishing me well which I have
11 received to date. A copy of my reply
12 to one of them is attached."

13 Now, in relation to Mr. Lawlor's question to you Mr.
14 Cauley goes on in his letter, "I thought I should provide
15 you with this particular letter so that
16 you would know that my part of the
17 bargain in respect to this has been
18 rigidly maintained."

19 I believe you stated there was no bargain or agreement
20 that he should not do anything to make it appear that he
21 hadn't retired and, well then, did you think it odd to get
22 this letter?

23 THE WITNESS: I thought the wording was,
24 but it was Mr. Cauley's wording, but he had sent me a
25 copy of a letter and I believe it is filed as an Exhibit;
26 it was to the Firefighters' Association which simply said
27 that he regretted that he could not attend their meeting;
28 he had told me that there was several meetings, union
29 meetings or conventions that he was invited to and would
30 normally speak at them. I felt that he should not go

1 there speaking as a vice-chairman when he was not vice-
2 chairman. I did not say incidentally that he should not
3 attend or lie low or anything of that kind.

4 MR. GOOD: So after April of 1969 you would
5 have had no objections had he gone out and got another
6 job as a retired member of the Board. You hadn't
7 announced this?

8 THE WITNESS: This hadn't -- the matter of
9 other jobs was never discussed and as I said yesterday
10 when I read a statement, "At no time, however, did I tell
11 him that he was to restrict his normal
12 activities and not lead a normal day
13 to day life."

14 MR. GOOD: He evidently had told you that
15 he would?

16 THE WITNESS: No, he had not told me he
17 would restrict it.

18 MR. GOOD: In other words, he says he was
19 keeping his part of the bargain?

20 THE WITNESS: He was referring in my view
21 to our discussion that he would not go to those particular
22 discussions and speak as vice-chairman of the Board.

23 THE CHAIRMAN: Does that complete the quest-
24 ioning?

25 MR. DEANS: Mr. Bales, just for the record
26 Mr. Cauley said on page 31 of the April 5th Hansard:

27 "So the monies I received for agreeing
28 to step out to ease a situation which
29 apparently was embarrassing to some
30 members of government, I was paid

damages - pure and simple."

Was it an embarrassing situation, Mr. Cauley remaining with the Board?

THE WITNESS: No.

MR. DEANS: Was there any thought in your mind that it would be better for the Board operation if Mr. Cauley left?

THE WITNESS: I expressed yesterday some concern as to the division of opinion and as to whether that division of the Board was causing the work of the Board to suffer.

MR. DEANS: I got the impression that you were rather more concerned about his health rather than you were in a division of the Board.

THE WITNESS: The work of the Board was a paramount concern to me. I was also concerned about his health and for him as an individual. My primary concern must be the overall good of the Board.

MR. DEANS: What then did Mr. Cauley say to you on May the 5th other than his own personal reference to health and the fact that he thought you might wish him to retire that prompted you to say that might be the best thing?

THE WITNESS: We discussed his private health matters, he raised that, and I wanted to see whether this was really his thought in mind, that obviously he had given some thought to it, concern. He had talked to Mr. Eberlee at his home and expressed some grave concern as to whether he could really carry on. I wanted to see what was really on his mind, he expressed a concern to that and taking it all and giving some thought

1 to it as we talked. I had to prove from Mr. Cauley's
2 standpoint what would be best, from his standpoint and
3 from the Board's it was important for him to retire.

4 MR. DEANS: You had to satisfy him he could
5 not carry on?

6 THE WITNESS: I don't think a person should
7 be forced to carry on and he was obviously of the mind it
8 would be better for his own sake and probably for the
9 Board.

1 given careful consideration to the appeal system during
2 the time that I was there.

3 MR. DEANS: It would seem from what you
4 say then that in spite of the differences of opinions
5 in the Board the system worked fairly well?

6 THE WITNESS: In my view it was working
7 fairly well.

8 MR. DEANS: In fact the differences
9 weren't impairing the system?

10 THE WITNESS: It is my opinion that when
11 a decision is made then you don't go back thrashing over
12 straw, you get on with the job and the policy that is
13 there and make it work; this is what I said.

14 MR. DEANS: And it was working?

15 THE WITNESS: I think it was working, but
16 one had to push to make sure that it was going to continue
17 to work and people were not going to have contrary views,
18 and attempt to undermine it.

19 MR. DEANS: Did you think that in the actual
20 application of the system that there was evidence of Mr.
21 Cauley attempting to undermine it?

22 THE WITNESS: Well, Mr. Cauley had other
23 views and I have not so much had it expressed directly to
24 me but perhaps indirectly to me by other people that Mr.
25 Cauley still felt that the system was not the right one.

26 MR. DEANS: But that isn't really what I
27 am asking, sir. I can understand that he may never
28 change his mind, but the fact the system -- he may never
29 believe that that system is better than the previous one,
30 but was there any evidence that he didn't work in such

1 a way to make the system as it exists now work properly
2 here?

3 THE WITNESS: Let me make it clear, I have
4 no direct evidence that Mr. Cauley was trying to frustrate
5 the system, no.

6 MR. DEANS: In fact in terms of the
7 hearings themselves you agree that Mr. Cauley did pull
8 his weight?

9 THE WITNESS: That's right.

10 MR. DEANS: And if the system had failed
11 which it may not have failed, but if it had it wouldn't
12 have been his fault in terms of actual application of
13 work to the system?

14 THE WITNESS: I think there is a larger
15 problem, Mr. Deans.

16 MR. DEANS: I think there is too.

17 THE WITNESS: That is that when a decision
18 is made and you are a member of the Board, then it is
19 your obligation to do everything in your power to make
20 it work and not in any way to speak against it and so on.
21 If you are part of that decision making group then either
22 you remain with it or you leave it.

23 MR. DEANS: I was under the impression, sir,
24 that from discussion in previous testimony I believe by
25 yourself and Mr. Eberlee that Mr. Cauley rarely if ever
26 complained about it.

27 THE WITNESS: To us.

28 MR. DEANS: But you did ask him or am I
29 wrong -- someone asked him, I think it was you, to itemize
30 what complaints he had. Perhaps it wasn't you.

1 THE WITNESS: I don't recall that.

2 MR. DEANS: It was someone but that doesn't
3 matter. Okay, fine, but it is true though that he did
4 work within the system and his effort was as much a part
5 of its success as anyone else's?

6 THE WITNESS: Yes.

7 MR. ALLAN: Mr. Bales, I wonder, as a
8 result of this word damages haveing been mentioned a
9 number of times, I wonder if I could ask you during the
10 times of the discussions and the times that we have
11 discussed Mr. Cauley's separation from the Board if the
12 word "damage" was in your mind at any time, or if as far
13 as you know it was ever given consideration by the Board
14 in arriving at the basis of payment that was paid to Mr.
15 Cauley before he went on pension?

16 THE WITNESS: Damages were never in my
17 mind and I indicated that Mr. Cauley should receive
18 whatever he is entitled to according to Board policy,
19 general policy. And in addition I did refer to whatever
20 retroactive salary adjustment that might be authorized,
21 but at no time did I think of damages, think of this in
22 the way of damages, nor did I mention damages.

23 MR. ALLAN: And as far as you know this
24 didn't enter into the consideration by the Board of the
25 plan of payment?

26 THE WITNESS: No, what they were dealing with
27 would be what their general policies for senior servants
28 of long service.

29 MR. ALLAN: That is all.

30 MR. DONNELLY: Mr. Chairman, I have been

1 asked by counsel for Mr. Cauley to put this question to
2 the witness: in the conversation of the 5th of May did
3 you give any thought, sir, as to any financial loss that
4 Mr. Cauley had suffered if he did take his retirement
5 then as opposed to if he had gone on to age 65?

6 THE WITNESS: Well I gave thought to the
7 matter that if he retired immediately and unless I did
8 something about it he would not receive the benefit of
9 any retroactive salary adjustment, yes.

10 MR. DONNELLY: Did you make any calculation
11 as to what difference it might make to him if he proceeded
12 in a different way or anything of that nature, sir?

13 THE WITNESS: That would depend on whatever
14 the recommendation was concerning his salary adjustment.
15 If it was an adjustment \$20,500.00 to \$27,000.00 a year
16 by Order-in-Council.

17 MR. DONNELLY: I think the point that
18 counsel is after, did you make any calculation of what
19 his salary might have been with the knowledge you had
20 at that time on May 5th had he gone on to age 65 as
21 vice chairman?

22 THE WITNESS: I didn't make a calculation
23 of it, no.

24 THE CHAIRMAN: Does that complete the
25 questioning?

26 MR. DONNELLY: Yes; thank you.

27 THE CHAIRMAN: Mr. Bales, thank you very
28 much for contributing to these hearings.

29 You may be excused.

30 MR. DONNELLY: Mr. Marmash, please.

1 THE CHAIRMAN: (Swears the witness).

2 BOHDAN MARMASH, sworn:

3 EXAMINATION BY MR. DONNELLY:

4 Q. What is your full name, sir?

5 A. Bohdan Marmash.

6 Q. Your occupation, sir?

7 A. I am a partner in the firm of
8 Hickling and Johnston Limited, Management Consultants.

9 Q. And for how long have you been with
10 that firm?

11 A. Approximately five and a half years.

12 Q. And about 1968 and in 1969 were you
13 commissioned to do some work in connection with the
14 Workmen's Compensation Board?

15 A. Yes, we were asked to recommend
16 salary ranges for approximately 25 senior level positions.

17 Q. Can you tell us which particular
18 senior levels it was that you were instructed to deal
19 with?

20 A. It was the Chairman, the Vice-Chairman,
21 the member, the principal officers and certain selected
22 department heads.

23 Q. Prior to this commission, did you
24 know Mr. John Cauley?

25 A. No, not prior to our review.

26 Q. In the course of your review, did
27 you personally have anything to do with the review or
28 was it simply done by your firm?

29 A. No, I was personally very heavily
30 involved in it.

1 Q. In that connection with the review
2 did you meet Mr. Cauley?

3 A. Yes, I met him on one occasion to
4 derive information about his position and to ask him
5 questions as a member of the Board about the other
6 positions in the study.

7 Q. Did you have a record of when that
8 was, sir?

9 A. I do. This was on January 6th,
10 1969.

11 Q. Do you have any record of the
12 discussion of that date?

13 A. I have only rough notes.

14 Q. From those rough notes can you tell
15 us specifically what was discussed?

16 A. The interview was first of all
17 concerned with Mr. Cauley's position and he outlined
18 that in order for me to understand the scope of his
19 position it would be necessary to give me some of the
20 personal background -- his own personal background which
21 he did. Subsequently to that we discussed the principal
22 officers. We did not get into the discussion about the
23 department heads although we touched on one or two of
24 them. That was the extent of the discussion.

25 Q. Was there any discussion of salaries
26 or projected salaries for the post of Vice-Chairman?

27 A. Well, certainly certain numbers
28 during the discussion came up but not in the sense of a
29 negotiation or anything of this nature; it was a matter
30 of relating that position to other positions and what are

1 the comparisons and what are the proper ones and what sort
2 of background normally people come from.

3 Q. Is one of your techniques in evaluating
4 a position, do you ask the person in a position to make
5 his own evaluation in comparison with other positions?

6 A. Well I certainly ask him for that
7 as one input. I think it would be rather presumptuous
8 of me not knowing much about the position at the beginning
9 to sort of make my own judgments and then have the person
10 feel that these are completely irrelevant and therefore
11 not credible. So as one of the inputs, yes, I do consider
12 the person's own viewpoint, particularly at the higher
13 level positions.

14 Q. Do you recall what the viewpoint of
15 Mr. Cauley was on this occasion?

16 A. Yes, he compared his own position
17 with the members of the Ontario Hydro and some of the
18 other bodies.

19 Q. And was any amount stated or quoted
20 or estimated by either one of you?

21 A. Yes, he mentioned a figure in the
22 low 30's.

23 Q. What do you mean by the low 30's?

24 A. Well, somewhere between \$30 and \$35.

25 Q. I assume you are thinking of
26 thousands of dollars per year?

27 A. Yes, that's right.

28 Q. Did you as well assess the positions
29 of members, Chairman and Vice-Chairman, all three of them?

30 A. Yes, I did.

1 Q. And in your final report was there
2 any differentiation in salary of the three members?

3 A. Yes, there was a differentiation
4 between the Chairman and the other two members, the
5 Vice-Chairman and the member.

6 Q. Do you mean by that that the
7 Chairman gets one amount, the Vice-Chairman a second
8 amount and the member a third amount?

9 A. No, I'm sorry, the one higher amount
10 is delegated to the Chairman, then the other two positions
11 in the Board are recommended for a different and lower
12 amount.

13 Q. What was the distinction or the
14 reason for the distinction in recommendation relative
15 to the Chairman?

16 A. The function of the chief executive
17 officer that Mr. Legge has -- had at that time which
18 the other two members did not carry.

19 Q. Was that recommendation made after
20 consultation with all three members of the Board?

21 A. Yes, within a week of that date
22 when I saw Mr. Cauley, I also saw Mr. Legge and Mr.
23 Johnston at that time who was the other member.

24 Q. Other members here may have some
25 questions for you, sir. Will you wait just a moment?

26 A. Yes.

27 MR. DEANS: Mr. Marmash, when you spoke
28 of Mr. Johnston, what -- and obviously you went through
29 similar discussions you had with Mr. Cauley -- what
30 figure did he attach to the job?

1 THE WITNESS: He attached a similar figure;
2 it was the same.

3 MR. DEANS: It was the same?

4 THE WITNESS: Yes.

5 MR. DEANS: Did he compare it to similar
6 jobs?

7 THE WITNESS: That's right, he put the
8 value input into it, what sort of people in the future
9 would have to be drawn in order for the Board to carry
10 out its responsibilities, and he assessed to get these
11 competent people. This is what the Government would have
12 to pay.

13 MR. DEANS: What figure did the Chairman
14 attach to his position?

15 THE WITNESS: I don't think the Chairman
16 actually stated a figure.

17 MR. DEANS: Who did he compare his position
18 with?

19 THE WITNESS: He compared his position with
20 the Deputy Minister's and with other Chairmen of large
21 boards.

22 MR. DEANS: Any in particular that you
23 could recall?

24 THE WITNESS: Not that I can recall, I am
25 sorry.

26 MR. DEANS: There was no discussion with him
27 them in say ball park figures as to what he thought the
28 job was worth?

29 THE WITNESS: I am sorry, I can't recall
30 really. There was the same sort of discussion that was

1 fairly well similar, and some were rather open about it
2 and some were less reluctant.

3 MR. DEANS: In your discussion with the
4 three members, what was the primary distinction between
5 the Chairman's functions and those of the other two
6 members?

7 ---EXHIBIT NO. 57: Notes made by Mr. Marmash of his
8 discussion with Mr. Cauley on
January 6th, 1969.

1 THE WITNESS: The primary distinction is
2 the chairman is the primary chief officer and the others
3 are not in terms of the Board.

4 MR. DEANS: What does that mean in terms
5 of workload? What does the chief officer do that the
6 member doesn't do?

7 THE WITNESS: He is much more involved in
8 the actual management of the Board, has closer relationship
9 with the head of staff with the executive manager and also
10 represents the Board outside which is far greater to me
11 than the members were.

12 MR. DEANS: In terms of this management
13 function, recognizing that the Board has a general manager
14 and a secretary, what exactly is it that the chairman does
15 day to day that could be considered a management function?

16 THE WITNESS: I think he would be involved
17 in some of the functions of a perhaps day to day nature
18 that the other members would not be involved.

19 MR. DEANS: Well, particularly what? When
20 you discussed it you obviously didn't just accept the view
21 that he had certain management functions to perform. You
22 must have looked into that in order to determine how much
23 more he did and therefore, how much more he was worth.
24 Do you have records of the interviews that you conducted
25 and the records of the differences in the workloads of the
26 various members of the Board pertaining ---

27 THE WITNESS: No, we did not do a workload
28 analysis. This was not sort of an industrial engineering
29 study.

30 MR. DEANS: Well, who then did you speak

1 with other than the chairman and the vice-chairman and the
2 member of the Board about the jobs that they did?

3 THE WITNESS: I spoke to Mr. MacDonald and
4 I spoke to all the principle officers at that time and I
5 spoke to the department heads that were in that particular
6 study.

7 MR. DEANS: Did you speak to them about
8 the functions of the other members of the Board?

9 THE WITNESS: I asked them about the contacts
10 they had.

11 MR. DEANS: But did you speak to them about
12 the day to day operations of the functions of the members
13 of the Board?

14 THE WITNESS: To the degree that they could
15 contribute. This was not the primary purpose of the inter-
16 view because I don't think that some of the department heads
17 know what the Board members do.

18 MR. DEANS: We are having trouble ourselves
19 you see and that's why I am asking.

20 Perhaps we could go back again then. It
21 seems that the interviews you conducted in order to deter-
22 mine the salary level of the various Board members were
23 conducted primarily with the Board members and salaries,
24 in other words, that were under review.

25 THE WITNESS: Could you rephrase that?

26 MR. DEANS: Yes, I could rephrase it. In
27 deciding what you were going to recommend, the investigation
28 was conducted primarily in terms of discussing the operations
29 of the individual Board members, the day to day responsi-
30 bilities with the individual members?

1 THE WITNESS: I may not be certain whether
2 I will answer your question so please tell me. No, this
3 was not a study to determine the actual workload or
4 competence or individual performance of individuals; this
5 was strictly a position evaluation.

6 MR. DEANS: Let me stop you there for a
7 moment. I am not interested in their capabilities, I
8 am interested in whether or not you discussed the job they
9 were doing with other than the individual members. Did
10 you talk, for example, with anyone other than Jack Cauley
11 about the vice-chairman's job?

12 THE WITNESS: Yes, I did, to Mr. Legge.

13 MR. DEANS: Did you talk to anyone other
14 than Mr. Legge about the chairman's job?

15 THE WITNESS: No.

16 MR. DEANS: Well, how then could you decide
17 what it was the chairman did and what he was worth if you
18 only talked to the chairman?

19 THE WITNESS: Because the contacts that the
20 other members had as part of their job reflected or confirmed
21 or denied what Mr. Legge did or said that he did. In other
22 words, what I do is when I interview I try to identify any
23 inconsistencies in what people say and then if they are
24 adding, I then go and check these and I found no inconsis-
25 tencies.

26 MR. DEANS: Did you speak to Mr. Johnson
27 about Mr. Cauley's job?

28 THE WITNESS: Not specifically, only as it
29 crept up in the discussion.

30 MR. DEANS: You didn't specifically raise

1 whether or not the vice-chairman had more responsibilities,
2 say, than the member?

3 THE WITNESS: Yes, of course.

4 MR. DEANS: You did?

5 THE WITNESS: Yes.

6 MR. DEANS: Did you decide, did he or did
7 he not?

8 THE WITNESS: In the absence of the chairman
9 I decided there was no appreciable difference and this
10 reflected in my recommendations for the recommended salary
11 was the same for the other two members.

12 MR. DEANS: I suppose you didn't check to
13 see whether the absence of the chairman was an oft times
14 thing?

15 THE WITNESS: I thought that and I still
16 do, that that is an individual aspect of performance of
17 the job and that was not within my frame of reference.
18 It's a very thin line and I have to tread lightly
19 in this regard.

20 MR. DEANS: Did you recommend the vice-
21 chairman in assuming the responsibilities of chairman
22 should receive an addition to the salary of the normal
23 operations of vice-chairman?

24 THE WITNESS: This is a subjective thing
25 and I thought that this was not enough to warrant a
26 different salary level.

27 MR. DEANS: Well how did you know if you
28 didn't know whether he did it often or not?

29 THE WITNESS: By comparison with what is
30 the practise in other similar organizations and, again,

1 | this threads very thinly on the line of individual per-
2 | formance.

3 | MR. DEANS: When you came to the final
4 | conclusion how close to the figure recommended by the vice-
5 | chairman and the members did you come in your recommendations?

6 | THE WITNESS: It was lower. Well you are
7 | interested in the figure that I recommended as opposed to
8 | what was implemented?

9 | MR. DEANS: I am interested in the figure
10 | that was recommended as opposed to the figure that was
11 | suggested by the individual members of the Board.

12 | THE WITNESS: The figures that I recommended
13 | were somewhat lower than the figures that were talked about
14 | during the interviews.

15 | MR. DEANS: Considerably lower?

16 | THE WITNESS: No, not considerably lower.

17 | MR. DEANS: Do you recall what the figure
18 | was that was implemented?

19 | THE WITNESS: Twenty-seven thousand was
20 | implemented.

21 | MR. DEANS: Twenty-seven thousand was
22 | implemented?

23 | THE WITNESS: Right.

24 | MR. DEANS: You recommended what?

25 | THE WITNESS: I recommended \$32,000. at
26 | that time.

27 | MR. DEANS: Thirty-two thousand?

28 | THE WITNESS: That's right.

29 | MR. DEANS: And you did say earlier that the
30 | suggestions of the members of the Board was in the low

1 thirties?

2 THE WITNESS: Thirty to thirty-five so
3 you know, it was approximately the same or possibly a little
4 lower.

5 MR. DEANS: You recommended approximately
6 what they thought the jobs were worth, approximately?

7 THE WITNESS: When I reviewed my notes, yes,
8 approximately the same.

9 MR. DEANS: Approximately. Is this true
10 in all three categories?

11 THE WITNESS: No, I don't think so.

12 MR. DEANS: It's not true in all three
13 categories, when you look at all three categories of the
14 Board, the chairman, the vice-chairman and the member?

15 THE WITNESS: Well, for one thing, I recall
16 that there was the statement that all Board members should
17 be paid the same and I disagreed with that.

18 MR. DEANS: They hadn't been paid the same,
19 though, previously?

20 THE WITNESS: No.

21 MR. DEANS: And you recommended a figure
22 higher than the \$32,000. for the chairman?

23 THE WITNESS: Yes.

24 MR. DEANS: How much higher?

25 THE WITNESS: Thirty-five.

26 MR. DEANS: The question that you had with
27 Mr. Cauley about his salary was really I suppose around him
28 was concerned, you recall quite clearly that there was a
29 full discussion on the 6th of January about the salary
30 that he ought to have made?

1 THE WITNESS: The reason I recall is because
2 I consulted my notes and I do keep notes because when I
3 am doing several or quite a number of interviews it would
4 be impossible for me to remember to do a proper analysis
5 afterwards so this is how I recall.

6 THE CHAIRMAN: Mr. Miller?

7 MR. MILLER: Mr. Marmash, the objectivity
8 and subjectivity of this kind of an appraisal must be very
9 difficult to assess. You talked to Mr. Cauley about the
10 wage that you felt he should have. Did he at any time
11 suggest that the vice-chairman and the chairman should be
12 equal?

13 THE WITNESS: I really don't recall whether
14 he himself did that. I know that the suggestion was made.

15 MR. MILLER: You made recommendations on
16 a series of people in the Board including the chief officers
17 of the Board?

18 THE WITNESS: Yes, that's right.

19 MR. MILLER: How did these compare to the
20 salaries recommended for say the chairman or the vice-
21 chairman?

22 THE WITNESS: These were all lower.

23 MR. MILLER: They were all lower?

24 THE WITNESS: Yes.

25 MR. MILLER: In your recommendations?

26 THE WITNESS: Yes.

27 MR. MILLER: Can you tell me what your
28 recommendations were in that particular area?

29 THE WITNESS: At that time?

30 MR. MILLER: Yes.

1 THE WITNESS: Thirty thousand, five hundred,
2 was accepted for Mr. Legge, twenty-seven thousand was
3 accepted for the other two members.

4 MR. MILLER: Now let's say the executive
5 manager?

6 THE WITNESS: The executive manager was
7 at that time put at \$25,500.

8 MR. MILLER: And that was accepted?

9 THE WITNESS: That was the implemented
10 amount.

11 MR. MILLER: Twenty-five, five was implemented?

12 THE WITNESS: That's right, and I recommended
13 \$30,000 at that time.

14 MR. MILLER: And I assume that was the
15 highest?

16 THE WITNESS: That's right, there was no one
17 higher than that.

18 MR. MILLER: Have you made a further study
19 since that time?

20 THE WITNESS: Yes, I have.

21 MR. MILLER: Have changes been made in the
22 relationships of the salaries?

23 THE WITNESS: Yes, they have.

24 MR. MILLER: What kind of changes?

25 THE WITNESS: How would you like me to put
26 this, specific figures?

27 MR. MILLER: I think specific figures, yes.

28 THE WITNESS: October 1, 1970, the chairman
29 was \$37,500., the two members at \$30,000. and Mr. MacDonald
30 was at \$32,500. so the relationship changed there.

1 MR. MILLER: These are the recommendations
2 or the figures?

3 THE WITNESS: These were both.

4 MR. MILLER: Your figures then were accepted
5 as read and as far as you know these are the current
6 salaries of these people?

7 THE WITNESS: No, I think there was an
8 adjustment -- I know there was an adjustment as of
9 October 1, 1971.

10 MR. MILLER: For all people?

11 THE WITNESS: I don't have the record here
12 on that one, yes, there were.

13 MR. MILLER: So the chairman is still the
14 most highly paid?

15 THE WITNESS: That's right, the relationship
16 has not changed.

17 MR. MILLER: I think those are all the
18 questions I have, Mr. Chairman.

19 THE CHAIRMAN: Any other questions from
20 Committee members?

21 MR. WISEMAN: I was wondering, in view that
22 you put the chairman up to \$37,500., do you think his
23 workload has increased in that regard? I notice that
24 you only have him at \$30,000. on your other statement.

25 THE WITNESS: I felt that our recommen-
26 dations back in January of 1969 were valid and the movement
27 of salaries generally has increased since that time and
28 consequently my recommendations were made in that light.
29 They were not made in the light of workload increase or
30 this sort of thing.

1 MR. MILLER: There was one point that has
2 been brought up to me, Mr. Marmash. In the interval
3 between the first recommendation and the second one, you
4 have increased the executive group manager's relative
5 salary so it now exceeds that of the two members of the
6 Board; is that correct?

7 THE WITNESS: That's right.

8 MR. MILLER: What would be the basis for
9 this change?

10 THE WITNESS: Again, comparison with other
11 management positions generally and the particularly heavy
12 compression that existed at senior levels in public service
13 generally and not being able to pay competitive rates
14 as you go up the scale. In other words that by compression
15 I mean salaries of those that you have to pay that are
16 reporting to Mr. MacDonald. In other words, department
17 heads and principle officers.

18 MR. MILLER: In the same interval then,
19 the same compression has not applied to the other two
20 members of the Board?

21 THE WITNESS: No, because the Board members'
22 comparisons are more with other Board members having
23 similar jobs, similar responsibilities, and they do not
24 have people reporting to them, if I may use that phrase,
25 whose salaries have to be kept up if you want to keep them
26 and if you want to hire good, competent individuals.

27 MR. MILLER: Perhaps we should have you
28 evaluate the private members' role.

29 THE CHAIRMAN: Mr. Good?

30 MR. GOOD: One question: at no time in your

1 evaluation you considered other than the job involved in
2 that position; is that correct? It's not the workload or
3 the competence you have the person in, it's just the actual
4 position; do I understand you correctly?

5 THE WITNESS: No, not at any time, but in
6 this particular case the workload only as it forms part
7 of the job. In other words, is it part time or full time,
8 this sort of thing is relevant but how many cases -- it
9 is certain competence and certain level of individual that
10 is required to fill that position is the important factor
11 and certainly it was not in the frame of reference of
12 this particular study to look into the competence of the
13 individuals.

14 MR. GOOD: What about the frame of reference
15 regarding the executive manager? Would it be a different
16 frame of reference from the members of the Board?

17 THE WITNESS: Same level and same assignment.

18 MR. GOOD: Same assignment. So when any
19 increase was made, it was just on the basis of what that
20 particular position, how he was related to other positions?

21 THE WITNESS: That's correct.

22 MR. GOOD: Nothing to do with attendance
23 or anything?

24 THE WITNESS: That's right.

25 THE CHAIRMAN: Mr. Stokes?

26 MR. STOKES: Mr. Marmash, I wanted to ask
27 you, was it part of your term to inquire into the conditions
28 of severance for senior members of the Board such as
29 accumulated sick leave?

30 THE WITNESS: No, sir.

1 MR. STOKES: Nothing at all?

2 THE WITNESS: Nothing at all.

3 MR. STOKES: Nothing at all ever came up?

4 THE WITNESS: No.

5 MR. STOKES: So yours was strictly a
6 function of ---

7 THE WITNESS: Recommending salary levels
8 for positions.

9 THE CHAIRMAN: Mr. Allan?

10 MR. ALLAN: Mr. Chairman, I don't want to
11 get into this this morning with respect to some of the
12 senior officers who left the Board and their salaries
13 but I am wondering if we could be assured that if we
14 wanted to call Mr. Marmash at a later time, we could
15 discuss this at a later time.

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1 MR. DONNELLY: Are you available, sir, at
2 a later date?

3 THE WITNESS: Yes.

4 THE CHAIRMAN: Questions from other members?

5 Mr. Gaunt?

6 MR. GAUNT: Mr. Chairman, just one matter
7 in clarification. Mr. Marmash, you indicated there
8 was a later adjustment on October 1st, '71 and were
9 you involved in that adjustment or was this done entirely
10 within the Board?

11 THE WITNESS: This was the adjustment for
12 the Ontario Public Service.

13 MR. GAUNT: And you were not involved in it?

14 THE WITNESS: Yes, I was part of it, I
15 was involved in it.

16 MR. GAUNT: So does your recommendations
17 coincide with what eventually was given?

18 THE WITNESS: Yes.

19 MR. GAUNT: And do you know what those
20 figures were?

21 THE WITNESS: I don't have the '71 figures
22 here with me. I could make them available.

23 THE CHAIRMAN: Mr. Wiseman?

24 MR. WISEMAN: Mr. Chairman, I wonder if
25 it is customary here to adjust the wages every October
26 the last two years?

27 THE WITNESS: The last two years there
28 has been, but this has not been adjusted every October
29 since '68, not every year, no.

30 MR. WISEMAN: Is this type of service

1 expensive?

2 THE WITNESS: I beg your pardon?

3 MR. WISEMAN: Is this type of service very
4 expensive, looking into the salaries of these 25 senior
5 officials? Is it quite costly? Is it necessary to do it
6 every year?

7 THE WITNESS: Well if there are changes in
8 the organization and if there are changes in the relative
9 work positions it has to be kept up to date.

10 THE CHAIRMAN: Mr. Lawlor?

11 MR. LAWLOR: I am interested in the scope
12 of your operations not only with respect to private
13 industry, but to governmental functions. Has your firm,
14 for instance, done a similar assessment in hydro?

15 THE WITNESS: No, we have not.

16 MR. LAWLOR: Have you done it for any other
17 governmental agency?

18 THE WITNESS: Yes, we have done it in three
19 provinces; we have done some work for Crown corporations.

20 MR. LAWLOR: Federal or provincial Crown
21 corporations?

22 THE WITNESS: Federal and also three
23 provinces in the last five years.

24 MR. LAWLOR: Not the poorer provinces -- or
25 which provinces?

26 THE WITNESS: Is this relevant?

27 MR. LAWLOR: I am asking the question and
28 I haven't been ruled out of order yet.

29 THE CHAIRMAN: Maybe shortly.

30 THE WITNESS: Mr. Chairman?

1 MR. DONNELLY: I don't think there is really
2 any privilege before the House, but there is really a
3 question of discretion.

4 THE WITNESS: That's what I am concerned
5 about and I am just wondering whether -- am I free to
6 answer this?

7 THE CHAIRMAN: I don't believe it is
8 relevant, Mr. Lawlor.

9 MR. LAWLOR: Let me ask this question then:
10 Have you done any interrogations with regard to quasi-
11 judicial agencies? I am saying to you that the Workmen's
12 Compensation Board are a very special kind of function--
13 their fundamental duties are of a quasi-judicial nature?

14 THE WITNESS: That's right.

15 MR. LAWLOR: Have you done any work in
16 comparison with other agencies like it?

17 THE WITNESS: Yes, I have.

18 MR. LAWLOR: Can you mention that or is it
19 privileged too?

20 MR. DONNELLY: I'm not sure it's a straight
21 question of straight privilege. In my opinion I don't
22 think there is a privilege, but that doesn't eliminate
23 the question of common sense and discretion. If it's
24 necessary I suppose we can compel the witness to answer.
25 You may not think it's necessary.

26 MR. LAWLOR: I'm not going to press him,
27 Mr. Chairman.

28 THE WITNESS: I don't wish to appear to be
29 unco-operative. I am somewhat concerned, though, with
30 the confidence involved here and consequently this is why

1 I am reluctant.

2 THE CHAIRMAN: I think we can appreciate
3 that.

4 MR. LAWLOR: I fail to detect the confidence.

5 THE CHAIRMAN: I think the witness has
6 mentioned if I recall correctly that this does compare
7 favourably.

8 THE WITNESS: That's correct.

9 MR. LAWLOR: What was the salary of the
10 chairman and the other members of the Board prior to 1969?

11 THE WITNESS: The chairman was paid \$22,500
12 and the vice-chairman was paid \$20,500 and the member
13 was paid \$20,000.

14 MR. LAWLOR: Thank you.

15 MR. GOOD: One question, Mr. Chairman.

16 THE CHAIRMAN: Just a moment, Mr. Good.
17 Are there any other members that have questions at this
18 time? We would like to keep it in the one order if we
19 can.

20 Mr. Good?

21 MR. GOOD: Yes, one question: Who engaged
22 your firm?

23 THE WITNESS: A memo by the Board dated
24 September, 1968.

25 MR. GOOD: It wasn't the Cabinet or an
26 order in council?

27 THE WITNESS: I don't know the procedures,
28 but that's how we were engaged?

29 MR. GOOD: A memo from the Board.

30 THE CHAIRMAN: I think we may be able to

1 help Mr. Good there. Mr. Good, I believe the Minister
2 of Labour, the former Minister of Labour advised that
3 he recommended to the Board this work because they had
4 done some other work for the government.

5 THE WITNESS: That's right.

6 MR. ALLAN: Mr. Marmash, you say you were
7 appointed by a memo from the Board. Did the Board appoint
8 you and did this refer to the salaries of the members of
9 the Board? Was this covered in the order that was passed
10 by the Board?

11 THE WITNESS: I'm sorry, I don't recall the
12 technicalities here, but we were asked to come in to
13 discuss the problem.

14 THE CHAIRMAN: Just a moment, can we hear
15 from counsel?

16 MR. DONNELLY: I think they are on file
17 but I'm not sure and I think it is Exhibit 10 and 11.

18 MR. DEANS: Mr. Chairman, may I ask ---

19 THE CHAIRMAN: May I read this at this time?
20 This is an order of the Board dated September 20th, 1968:

21 "The Board approves retaining the
22 consultant firm of Hickling and
23 Johnston to review the salaries of
24 the Board members and certain principal
25 officers as designated by Mr. A.G.
26 MacDonald.

27 (signed)
J. Cauley and B. Legge"

28 MR. DEANS: May I ask one other question?
29 You have done work for other government agencies?

30 THE WITNESS: Yes, sir.

1 MR. DEANS: Has there been the same kind
2 of substantial increases in the other agencies from the
3 year 1969 to the year 1971 as we see -- as in the case
4 of the chairman and the other members comparatively from
5 \$22,500 to \$39,000 as I understand it?

6 THE WITNESS: No, I don't think so. The
7 reason that this one is unusual is where the senior
8 Workmen's Compensation salaries have been kept down quite
9 significantly, quite low -- I don't have the figures now,
10 but they prior to 1969 have not had an adjustment for a
11 long, long time and at that time there were differences
12 in the hundreds and five hundreds and people being paid
13 the same for different levels of responsibility, this
14 was a fairly unusual situation in a very conservative
15 treatment of salaries since 1969 and therefore there
16 was a very important attachment to be attached.

17 MR. DEANS: The substantial increase?

18 THE WITNESS: That's right.

19 MR. DEANS: Perhaps the Board ought to employ
20 you to look at pensions paid to injured workmen.

21 MR. GOOD: I just wanted to know on whose
22 authority they were hired, whether it was Cabinet and
23 the Board and my question has been answered.

24 THE CHAIRMAN: Well the Board ordered it.
25 Anything further?

26 MR. DONNELLY: Mr. Chairman, I have been
27 asked by Mr. Austin acting for the Board to put this
28 question. As part of your input as you call it in your
29 survey, sir, do you ask the persons whom you interview to
30 submit a questionnaire completed back to you?

1 THE WITNESS: Yes, I did, sir.

2 MR. DONNELLY: How many questionnaires
3 did you send out in this particular case?

4 THE WITNESS: To every individual.

5 MR. DONNELLY: Do you know how many that
6 was?

7 THE WITNESS: How ever many number of
8 people were to be included in the study.

9 MR. DONNELLY: Are you able to be more
10 specific than that, sir?

11 THE WITNESS: Thirteen, and there were
12 about three additions after -- 16 at that time.

13 MR. DONNELLY: I don't really understand
14 that. Like you have Exhibit 11 in front of you and has
15 the righthand column any significance?

16 THE WITNESS: Oh, I'm sorry, yes. However,
17 there are positions stated here which would be 28 and
18 there were multiple incomes -- there were more than the
19 one general manager, there are about seven or eight
20 general managers in the Safety Association so therefore
21 there would be approximately 30.

22 MR. DONNELLY: Do you have a record of
23 the number of questionnaires that were completed and
24 returned to you?

25 THE WITNESS: Yes, we do.

26 MR. DONNELLY: How many were there?

27 THE WITNESS: All were completed and
28 returned with the exception of two.

29 MR. DONNELLY: Did Mr. Cauley complete a
30 return?

1 THE WITNESS: No, Mr. Cauley did not
2 complete his form -- was one of the two.

3 MR. DONNELLY: Can you tell me the length
4 of time the interview was with Mr. Cauley in January
5 of 1969?

6 THE WITNESS: Approximately two hours.

7 MR. DONNELLY: When I asked you about the
8 salaries you didn't look at your notes. Later when Mr.
9 Deans asked you a question you had your notes out.
10 Having looked at the notes can you say anything more
11 specific about the salary conversation with Mr. Cauley?

12 THE WITNESS: Mr. Cauley was the person who
13 stated that all Board members should be paid equally and
14 he said historically salaries were kept very, very low.
15 I'm sorry, not low, historically salaries were kept very
16 close among the members and should remain so.

17 MR. DONNELLY: Was any figure quoted, sir?

18 THE WITNESS: At that time the figure of --
19 well he gave me what he was making at that time and then
20 he mentioned the \$35,000 figure related to Ontario Hydro
21 and Liquor Control Board. And he also compared it to
22 provincial and federal deputy ministers and stated these
23 have always been above up to recently and that's the
24 notes I have.

25 MR. DONNELLY: And that was his position
26 as vice-chairman, he was comparing these other positions
27 to?

28 THE WITNESS: That's right.

29 MR. DONNELLY: I'm sorry?

30 THE WITNESS: One other notation I have here

1 is that back in 1952 some top industrialist made salary
2 recommendations to the government and that's all.

3 MR. DONNELLY: You may have told us, sir,
4 but I don't recall. In your 1968 or '69 survey, the first
5 of the ones you told us about, you told us what you re-
6 commended for the vice-chairman and what was implimented
7 and you have also told us what was implimented for the
8 chairman. I don't think you told us what you recommended
9 for the chairman at that time.

10 THE WITNESS: I recommended a range -- I only
11 quoted the maximum figures. For the chairman I re-
12 commended a range between 30 and 35. For the vice-chairman
13 and commissioner I recommended a range between 28 and 32.
14 These were my specific recommendations. So consequently
15 if I may my answer saying it was lower than mentioned is
16 correct.

17 MR. DEANS: Marginal?

18 THE WITNESS: It was 28 and 32.

19 MR. DONNELLY: Thank you.

20 MR. DEANS: You mentioned that you conducted
21 a two hour interview with Mr. Cauley. It wasn't all about
22 his salary, was it?

23 THE WITNESS: It was about his position.

24 MR. DEANS: For all the two hours?

25 THE WITNESS: That's right.

26 MR. DEANS: At the beginning you said you
27 discussed the entire range -- you spoke to Mr. Cauley
28 about his position and then about the other managements'
29 position?

30 THE WITNESS: That's right, because as a

1 member of the Board he is concerned about them and that's
2 part of his job.

3 MR. DEANS: Did that all occur in the same
4 two hour period?

5 THE WITNESS: That's right.

6 MR. DEANS: So then the whole two hours
7 wasn't spent discussing his position?

8 THE WITNESS: I considered his concern for
9 the other positions as part of his job and therefore
10 relevant and therefore ---

11 MR. DEANS: But what I understood is you
12 weren't discussing his salary during that whole two hours?

13 THE WITNESS: No. I wanted to understand
14 what his whole job was about.

15 MR. DEANS: And you considered he had some
16 part to play in the general operation of the Board?

17 THE WITNESS: Well, yes, some part, because
18 he is a member of the Board and matters of management
19 do come up in front of the Board.

20 MR. DEANS: You didn't take many notes for
21 two hours, did you?

22 THE WITNESS: No.

23 MR. DEANS: You rely alot on your memory
24 then?

25 THE WITNESS: Well, I don't expect to refer
26 to them years afterwards and this is why I did mention
27 that I don't recollection something.

28 THE CHAIRMAN: Mr. Miller, Mr. Wiseman and
29 Mr. Newman?

30 MR. MILLER: First, with respect, Mr.

1 Marmash, I believe I asked a question earlier and the
2 evidence you gave in regard to my question does not co-
3 rrespond to the evidence you gave a moment ago and that
4 was the question as to whether or not Mr. Cauley had
5 suggested the vice-chairman and chairman should be paid
6 equally. You told me he did not and a moment ago you
7 said your notes say he did.

8 THE WITNESS: Well, let me put it this way
9 to you. All I have written here is, "All Board members
10 should be equal."

11 MR. MILLER: That is the question I asked.

12 THE WITNESS: Now the reason I hesitated
13 and I still hesitate is because I don't know whether Mr.
14 Cauley refers to pay or to status or to voice on the
15 Board, I just can't recollect that.

16 MR. MILLER: My next question, were the
17 senior staff salaries as low relatively in 1969 as the
18 Board members salaries?

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1 THE WITNESS: They were not as low but
2 they were very low in comparison to these people who were
3 outside or they would have had real trouble hiring for
4 vacant positions; that is my judgment.

5 MR. MILLER: Can you be specific and tell
6 us what the executive manager's salary was in 1969 so we
7 will have a range?

8 THE WITNESS: The executive manager's
9 salary at the time I entered the picture was \$20,000.00
10 a year.

11 MR. MILLER: It was then basically the
12 same as a Board member?

13 THE WITNESS: That's right.

14 MR. MILLER: I note you have the general
15 managers of the Safety Association's down. Were they in
16 fact employees of the Board?

17 THE WITNESS: No, they are not employees
18 of the Board but there is a relationship there in that
19 we have been asked to recommended ranges for them.
20 They are employees of their own association and the payroll
21 is paid from the Board, and so there is an association
22 there with the Workmen's Compensation Board.

23 MR. MILLER: Out of pure curiosity, have
24 you a record of what these men obtained in your first
25 survey?

26 THE WITNESS: I don't have a record of
27 what these men obtained; I have a record of my recommenda-
28 tions.

29 MR. MILLER: Right. That will be good
30 enough.

1 THE WITNESS: In the original survey only
2 the general manager of the I.A.P.A. is mentioned and not
3 the others. Now I don't recall the reasons why but that
4 is all I have, so there is only one.

5 MR. MILLER: That is what?

6 THE WITNESS: At that time he was \$18,500.00
7 and he was recommended for a range of \$15,600.00 to
8 \$21,000.00 so he in fact was in the mid point of the
9 range.

10 MR. MILLER: So he was already there?

11 THE WITNESS: He was all right.

12 MR. MILLER: The last question I think is
13 relative to the rest of our inquiry, your fee for this
14 function.

15 THE WITNESS: I'm sorry, I don't have that
16 with me really. It should be -- Mr. Chairman?

17 THE CHAIRMAN: I don't think it is in the
18 Board order. If he is not mentioned in the Board order.

19 THE WITNESS: I don't know what the final
20 fee was but our quotation on this was \$69,000.00 for the
21 complete job evaluation study.

22 MR. STOKES: How much?

23 THE WITNESS: \$69,000.00.

24 MR. MILLER: That is all, Mr. Chairman.

25 THE CHAIRMAN: Mr. Wiseman?

26 MR. WISEMAN: I was wondering and I don't
27 know whether it was clear, was the Board order to each
28 of the salaries every year?

29 THE WITNESS: No, it was just a one shot
30 deal at that time.

1 MR. WISEMAN: But since that time you
2 reviewed them?

3 THE WITNESS: Not every year, no.

4 MR. WISEMAN: Maybe I am not right but I
5 thought it was in '69, October '70, and you don't have
6 the figures for October '71. That is almost every year,
7 isn't it? Did you review them in '69 first?

8 THE WITNESS: In '69.

9 MR. WISEMAN: Then I believe it was '70
10 and then you said you couldn't tell us what they were
11 in '71 when you reviewed them, but you weren't accurate?

12 THE WITNESS: The '69 adjustments were
13 tied in every year.

14 MR. WISEMAN: Is it customary when you
15 have done other evaluations such as this to do it each
16 and every year for other businesses?

17 THE WITNESS: It ranges from -- providing
18 there are no organizational changes within the structure
19 in other words for the organization it is every couple
20 of years or every year, or it may be as long as four years.

21 MR. WISEMAN: In view that there wasn't
22 any change other than Mr. MacDonald's salary why was
23 this done?

24 THE WITNESS: I think the reason for the
25 next adjustment was because original recommendations were
26 not implemented, they were implemented at a much lower
27 level and some of the problems the Board had continued
28 to exist because of the low salaries.

29 MR. WISEMAN: Do you anticipate another
30 survey in 1972?

1 THE WITNESS: I don't know.

2 THE CHAIRMAN: Mr. Newman?

3 MR. NEWMAN: Just one or two questions,
4 Mr. Marmash, In '67 I understand the Chairman was
5 around \$25,000.00 and the members were around \$20,000.00
6 and when you came in '70 and went to \$27,000.00 the
7 members were around \$30,000.00, right?

8 THE WITNESS: Yes.

9 MR. NEWMAN: Did you make any recommendations
10 as to 1971?

11 THE WITNESS: Yes, but the order for me
12 to appear -- I have the figures, it's just I don't have
13 them with me.

14 MR. NEWMAN: Would you like to guess how
15 much of an increase?

16 THE WITNESS: A very small one. I believe
17 the Chairman went \$1,500.00, the Vice-Chairman went
18 \$1,000.00. That's right, \$1,500.00 and \$1,000.00.

19 MR. NEWMAN: And are you still as far as
20 you know doing the work for the fiscal year '72?

21 THE WITNESS: Probably.

22 MR. NEWMAN: Do you think you will be
23 prepared to make further increases for '72?

24 THE WITNESS: Chances are there might not
25 be any adjustments.

26 MR. NEWMAN: You are talking about a 40-hour
27 work week on your studies are you?

28 THE WITNESS: Management jobs are not
29 40-hour work week jobs.

30 THE CHAIRMAN: Mr. Lawlor?

1 MR. LAWLOR: Would you undertake to supply
2 to the Committee a copy of your statement of accounts?

3 THE WITNESS: Statement of my which?

4 MR. LAWLOR: Your statement of accounts.

5 THE WITNESS: Of course.

6 MR. LAWLOR: Would you have any very
7 severe objection to filing with the Committee your notes
8 as to the assessment and went into that assessment?

9 THE WITNESS: Oh, yes, I think so. These
10 interviews are conducted on a confidential basis. On
11 the whole study you mean?

12 MR. LAWLOR: On your interviews and the
13 notes that you made.

14 THE WITNESS: My notes unfortunately are
15 in such shape that only I can read them. They are made
16 only for recollection purposes during analysis and this
17 is not as you can appreciate a scientific exercise. It
18 is not a scientific method and there is no mathematical
19 formula that you can determine a great deal of, it is
20 judgment.

21 MR. LAWLOR: Mr. Chairman, and I am going
22 to turn this to you and counsel on this particular -- in
23 assessing the roles there may be within those notes
24 pertinent information which has some value as to an
25 objective onlooker's assessment of that Board as it
26 existed, and I don't know how far to push the matter.

27 THE CHAIRMAN: Well, Mr. Lawlor, I think
28 we have the witness here and he has been quite cooperative
29 and by way of giving the Committee almost any information
30 it desires. Now I think at this time you might want to

1 ask him further questions on those notes as they pertain
2 to certain members of the Board, but I don't feel that
3 he should file the copies of his personal notes of
4 interviews, etc., and I think it is all right for the
5 us to file a copy of his account which he will have, but
6 I think he is here and I think if he doesn't want to file
7 the notes I think that might be a confidential nature to
8 his firm.

9 MR. LAWLOR: Mr. Chairman, would you be
10 prepared to go this far with me: would you give me
11 permission if the witness is amenable to peruse those
12 notes?

13 THE CHAIRMAN: I will leave that up to the
14 witness, but if he refuses ---

15 MR. LAWLOR: I would like an answer from
16 the witness.

17 THE WITNESS: Well, first of all let me
18 say that I don't think you would get much value, and
19 second, I don't think I would be prepared to give them
20 to you unless I was ordered to. Let me say something
21 else, though. The frame of reference for this particular
22 study was such that at that time I was not concerned
23 about the actual effectiveness of the Board; I was there
24 only to identify what the positions were, what the
25 responsibilities of these positions were and my questioning
26 was related to that alone, so consequently I don't think
27 they would really be of much value to you and that is
28 my opinion.

29 MR. LAWLOR: They have nothing to do with
30 personalities?

1 THE WITNESS: Nothing to do with person-
2 alities, nothing to do with work loadings, whether it
3 is heavy or not heavy. These were all full time positions
4 that we were looking at; these would have nothing to do
5 with the personal competence of the individuals, nor
6 whether the organization is sound or not. These were
7 not questions that I was putting to myself in going through
8 the Board.

9 MR. LAWLOR: Very well. Thank you, Mr.
10 Chairman.

11 THE CHAIRMAN: Perhaps we could have a
12 statement from counsel on this matter.

13 MR. DONNELLY: I think you are simply in
14 this position. You are simply in a position you can
15 compel the production if you think you have any reason
16 to do so. The witness seems to take objection to this
17 confidential information to him in his profession and it
18 may well be prejudicial to him in his professional
19 capacity if he is required to disclose it. He certainly
20 shows objection and I said at the beginning that as far
21 as I was concerned these hearings should be -- we are
22 dealing with honourable gentlemen and they should have
23 courtesy and respect and unless there is some good known
24 reason for it I don't see any reason to compel him to
25 file his notes, with great respect.

26 THE CHAIRMAN: Well he did refer to his
27 notes many times and was quite willing to give the
28 information from them.

29 MR. MILLER: I would suggest that if it
30 is in doubt as to any content in these notes, perhaps

1 counsel could have the right to look at them and appraise
2 them.

3 MR. DONNELLY: I don't want to put myself
4 into the position that I wouldn't put you in. I don't
5 want to infringe on the confidentiality of the witness's
6 position but probably I can discuss it with him at noon
7 hour and then report back to you at 2:00 o'clock.

8 MR. DEANS: Mr. Chairman, Mr. Marmash,
9 you said at that time that you were aware of the
10 competence of the work load of the people on that study.
11 Have you done any study on the Board that involved that?

12 THE WITNESS: No, I did not.

13 MR. WISEMAN: That was my question. I
14 misunderstood you.

15 MR. GAUNT: There was just one matter I
16 wanted to clear up, Mr. Marmash. You said you got a
17 memo from the Board for you to conduct your study in
18 1969 -- I think that is Exhibit No. 11. Were there
19 similar Board orders for the studies in 1970 and 1971?
20 Are you aware of that?

21 THE WITNESS: I think all the work that
22 I have done for the Board as I recall was approved by the
23 Board prior to this, yes.

24 MR. GAUNT: So how were you notified to
25 come in and do another study? Did you get another memo?

26 THE WITNESS: It was usually a telephone
27 call saying this is what needs to be done. I don't
28 recall. There were letters subsequent and phone calls,
29 but all the orders were approved by the Board, and there
30 was no work done other than by approval.

1 MR. GAUNT: So it was a very casual
2 arrangement as far as you were concerned?

3 THE WITNESS: No, I think it was a very
4 formal arrangement actually.

5 MR. GAUNT: Well, if they call you up on
6 the telephone and say, "Come on in and do a study for us,"

7 THE WITNESS: We don't do it until we have
8 approved by the Board though.

9 MR. GAUNT: Apparently it was approved by
10 the Board before you came in?

11 THE WITNESS: Yes.

12 THE CHAIRMAN: Mr. Gisborn?

13 MR. GISBORN: Mr. Chairman, I would have the
14 guidance of the counsellor if it would be possible to have
15 the memo from the Board to the firm for the survey tabled.
16 If not, we can get that information from the Board.

17 THE CHAIRMAN: It has been, the original.

18 MR. GISBORN: The question then to the
19 witness, in what fashion did your firm report the findings
20 of their survey to the Board?

21 THE WITNESS: We issued a report which went
22 to the Board.

23 MR. GISBORN: It was a written document?

24 THE WITNESS: Yes, it was a written document;
25 subsequently it went to the Treasury Board for approval.

26 MR. GISBORN: To what length would the
27 report go?

28 THE WITNESS: The report would be ten pages
29 stating, "Here is the recommended salary ranges and here
30 is what the current situation is," and that's it.

1 MR. GISBORN: Have we that document
2 available?

3 THE CHAIRMAN: No, I don't believe that
4 has been filed as an Exhibit but you can keep in mind
5 the original increases were lower than those recommended
6 in that report.

7 MR. GISBORN: I am not interested in that
8 point; I am interested in this action of the Board
9 ordering these services to be taken on their behalf and
10 these recommendations. I would like to see, and we can
11 pursue it later, how could we get a copy of the
12 recommendations of the firm to the Board and how they
13 arrived at those recommendations?

14 THE CHAIRMAN: I think it is possible to
15 have one -- a copy of that report or the report from
16 the Board.

17 MR. AUSTIN: I will look into the matter,
18 Mr. Chairman.

19 THE CHAIRMAN: That could be made available,
20 could it not?

21 MR. GOOD: Mr. Chairman?

22 THE CHAIRMAN: Mr. Good.

23 MR. GOOD: Do you have a copy here, Mr.
24 Marmash?

25 THE WITNESS: I have my rough copy of
26 it, yes.

27 MR. GOOD: Would the one that you
28 referred to a few minutes ago differ from the one that
29 was ---

30 THE WITNESS: No, it would be identical.

1 THE CHAIRMAN: I think it would be
2 preferable to have the Board report, the original copy
3 of that.

4 Mr. Lawlor?

5 MR. LAWLOR: Just a point to make my
6 position clear on the statements -- what I would ask you
7 to submit with the approval of this Board or this
8 Committee is the '69 -- not just the one statement,
9 the '69, '70 and if there is one for '71, that too,
10 your statement of account.

11 Is that okay?

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1 THE WITNESS: Well again, all these state-
2 ments are with the Board.

3 MR. LAWLOR: That's fine.

4 THE WITNESS: I was just wondering,
5 perhaps ---

6 THE CHAIRMAN: I think, again, we will go
7 to the Board for it.

8 MR. LAWLOR: If we can get them from the
9 Board; it doesn't matter where we get them from, as long
10 as we have them. The other thing is, in your testimony
11 you said something about -- I am not quite clear --
12 something about problems continue to exist with respect
13 to the salary levels?

14 THE WITNESS: Well, let me give you a very
15 specific example. May I please?

16 Usually what you will find in management
17 hierarchy that there is a significant difference between
18 the pay of these. As compared to the pay level of the
19 subordinate it reflects responsibility and ability and
20 whatever makes the job bigger. At the time that I first
21 came into the Workmen's Compensation Board there were
22 such things as Mr. Poole who was at that time the Director
23 of Adjudication and reported to Mr. MacDonald, was being
24 paid exactly the same, \$20,000. There was just no room
25 to move people in terms of salary to recognize additional
26 bigger responsibility. So Mr. MacDonald, in fact, was
27 not being compensated in relationship to Mr. Poole
28 although Mr. MacDonald had a higher position and
29 Mr. Poole reported to him. That is just one example.

30 MR. LAWLOR: I am not too much concerned

1 with that. Do these problems still stand with respect
2 to the members of the Board themselves?

3 THE WITNESS: I'm sorry, could you clarify
4 that question?

5 MR. LAWLOR: Well, you were mentioning
6 senior staff?

7 THE WITNESS: That is right.

8 MR. LAWLOR: Was there any problem as
9 among members of the Board?

10 THE WITNESS: No, sir.

11 THE CHAIRMAN: Have you completed,
12 Mr. Lawlor?

13 MR. LAWLOR: Yes, thank you.

14 MR. DONNELLY: Just one question. I am
15 not clear. If you do one year's investigation, does your
16 report refer only to the next year or is it possible that
17 you may report in '69 do this and in '70 do that?

18 A. Yes. I am sorry. In 1969, there
19 is no separate report for '70 - there is none. The changes
20 that occurred were as a result of a general change in the
21 public service of Ontario so consequently the Workmen's
22 Compensation Board members were part of that change.
23 There is no report from me to the Workmen's Compensation
24 Board for 1970.

25 THE CHAIRMAN: May I infer from that there
26 was no separate authority from your Board to your firm
27 in 1970?

28 THE WITNESS: That's right.

29 THE CHAIRMAN: That came as a general
30 revision?

1 THE WITNESS: That is correct.

2 MR. DEANS: Mr. Marmash, you said to
3 Mr. Lawlor that the differential between Mr. MacDonald
4 and Mr. Poole was not -- now I am just using this as an
5 example ---

6 THE WITNESS: Excuse me for interrupting.
7 I am not clear whether I answered that accurately or not to
8 you, that last question. I am very sorry for interrupting
9 but it bothered me.

10 MR. DONNELLY: May I go back, Mr. Deans?

11 MR. DEANS: Yes.

12 MR. DONNELLY: I am not sure of this myself.
13 The question I was putting is you have a specific authority
14 in one year that is filed here and did you get another
15 authority the following year from the Board to do another
16 survey?

17 What really put the question in my mind,
18 witness, the record won't show you were delayed in
19 but the one order will show that the one authority to
20 be implemented in two years?

21 A. Let me go into it a little more
22 literally. The order that resulted in my work was only
23 for that year and it resulted in recommendations for
24 1969 only. That was it. However, I am not clear whether
25 there is another report or not and I would have to go
26 back into 1970.

27 I am sorry, I would have to go back and
28 check my records and perhaps some of the Board could
29 help me in this regard as well.

30 MR. DEANS: You mentioned the difference

1 in salary between Mr. MacDonald and Mr. Poole as an
2 example of one of the problems. You pointed out that
3 since Mr. Poole answered to Mr. MacDonald and therefore
4 Mr. MacDonald had an overseeing capacity that his salary
5 should be higher, how then would you justify the higher
6 salary to Mr. MacDonald that the Board members since they,
7 in fact, have a capacity over Mr. MacDonald?

8 THE WITNESS: Not as individuals they don't.
9 As a Board they do.

10 MR. DEANS: As a Board but the Board members,
11 the salaries of the Board members are what make up the
12 salaries of the Board?

13 THE WITNESS: No, not as individual members,
14 they do not have jurisdiction as individuals over
15 Mr. MacDonald.

16 MR. DEANS: Well, none of them? You say
17 none of them have jurisdiction over Mr. MacDonald as
18 individuals?

19 THE WITNESS: Mr. Legge, as the individual
20 officer, does.

21 MR. DEANS: Where is that authority?

22 THE WITNESS: That was the way it was
23 spelled out to me.

24 MR. DEANS: Where is that authority?

25 THE WITNESS: I'm sorry?

26 MR. DEANS: Mr. Legge doesn't have the
27 authority to speak for the Board other than by Board
28 decision?

29 THE WITNESS: No.

30 MR. DEANS: And therefore his authority

1 doesn't go beyond the authority of the Board in total
2 and therefore each Board member has the same amount of
3 input into the final decision?

4 THE WITNESS: That's right.

5 MR. DEANS: And therefore each Board member
6 has the authority over Mr. MacDonald just as Mr. Legge
7 does while Mr. Legge may speak for the Board by delegated
8 authority?

9 THE WITNESS: But he is the chairman.

10 MR. DEANS: That doesn't matter. He is
11 compensated for that. What I am saying to you is that
12 each individual Board member has as much authority and
13 input into Board decisions as does the chairman; is that
14 correct? That the Board is identity and the Board
15 may only make decisions on the basis of the Board's
16 decisions and, therefore, Mr. Legge, though he does speak
17 for the Board because of the delegation of authority from
18 the other members, has no more input in Board decisions
19 than does either of the other two members of the Board?

20 THE WITNESS: Well, again, I would say
21 that we have reflected the position composition, the
22 content of positions.

23 MR. DEAN: But surely if the Board is made
24 up of three members and they hire someone else which they
25 have done, then that person is answerable to the Board
26 and the Board members by your -- you know, by your
27 process of delegation of authority then, must earn more
28 than the person they hire by your process. I am not
29 saying that is necessarily so.

30 THE WITNESS: I wish it were that simple,

1 but I'm sorry, it isn't.

2 MR. DEANS: Well, where is the authority
3 that says Mr. Legge has any more authority than any other
4 Board member. Where did you get that authority?

5 THE WITNESS: I am not saying that. I am
6 saying that in order to replace or in order to keep
7 individuals in those positions and, again, as I mentioned
8 before, I think to Mr. Lawlor, there is no scientific or
9 mathematical way. There are certain ways you can go about
10 analyzing the situation and this is what I have done and
11 it warrants a higher pay. Authority is only one factor.

12 MR. DEANS: But you mentioned, though, as
13 a primary factor, that he is answerable to Mr. MacDonald,
14 and Mr. Poole and Mr. MacDonald, therefore ---

15 THE WITNESS: This is in the staff of the
16 Board, hierarchy.

17 MR. DEANS: The same position surely
18 prevails between the staff and the Board if it is a
19 criteria?

20 THE WITNESS: I don't think that is a good
21 comparison, with all due respect. I think the relationship
22 between the chief of staff, the executive manager and
23 the Board is a different sort of relationship than a
24 straight line relationship between a subordinate and a
25 superior.

26 MR. DEANS: Did you consider the fact that
27 Mr. Legge had authority over Mr. MacDonald in determining
28 Mr. Legge's comparative salary to those salaries of
29 administrative officers?

30 THE WITNESS: I think Mr. Legge's salary

1 was more compared with other chairmen of the Board and
2 other people that would tend to fill that spot.

3 MR. DEANS: But you would agree that there
4 is not / ^{another} comparable body in the Province of Ontario?

5 THE WITNESS: I beg your pardon?

6 MR. DEANS: There is another similar or
7 comparable body doing work in Ontario with which to
8 compare?

9 THE WITNESS: I think there are.

10 MR. DEANS: There are? Would you name one?

11 THE WITNESS: The chairmen of some of the
12 other senior boards.

13 MR. DEANS: Name one where they hold court
14 hearings, crossed court.

15 THE WITNESS: O.M.B.

16 MR. DEANS: The O.M.B.? You would compare
17 them with the O.M.B.?

18 THE WITNESS: As one comparison. But not
19 comparison in terms of a mathematical way but, yes, it
20 is the sort of job that would be comparable.

21 MR. DEANS: So it would be reasonable then
22 to assume that the Board members of the O.M.B. are
23 similarly paid to the Board members of the Workmen's
24 Compensation Board?

25 THE WITNESS: These functions are of
26 similar nature, yes.

27 MR. DEANS: And you recommended salaries
28 comparable to the O.M.B. salaries?

29 THE WITNESS: Well, not that specifically.
30 You can't answer these questions in these black and white

1 terms.

2 MR. DEANS: You agree though that they
3 are not comparable to Hydro?

4 THE WITNESS: I agree they are not
5 comparable to Hydro, yes.

6 MR. DEANS: They are really in fact --
7 the O.M.B. is perhaps the only other one.

8 THE WITNESS: The Hydro is a special
9 situation. You have on the Hydro members of Parliament
10 which enter into different aspects of pay and there are
11 also part time situations there, they are not full time
12 so therefore they are not comparable.

13 MR. DEANS: But the O.M.B. is?

14 THE WITNESS: But the O.M.B. is and so are
15 a number of other bodies, yes.

16 MR. DEANS: I can think of no others.

17 Thank you.

18 THE CHAIRMAN: We will adjourn until
19 3:00 o'clock this afternoon.

20
21 --- Upon recessing at 12:00 p.m.
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